

103^D CONGRESS
1ST SESSION

H. R. 3586

To amend laws relating to defense acquisition, including provisions relating to the formation of contracts, contract administration and major system management, procurement of information management systems and commercial activity contracting, the small purchase threshold, intellectual property rights, defense trade and cooperation, and the acquisition of commercial items.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 1993

Mr. BILBRAY introduced the following bill; which was referred jointly to the Committees on Armed Services, Government Operations, and Small Business

A BILL

To amend laws relating to defense acquisition, including provisions relating to the formation of contracts, contract administration and major system management, procurement of information management systems and commercial activity contracting, the small purchase threshold, intellectual property rights, defense trade and cooperation, and the acquisition of commercial items.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defense Acquisition
5 Reform Act of 1993”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CONTRACT FORMATION

Subtitle A—Congressional Policy, Definitions, and Applicability

- Sec. 101. Congressional defense procurement policy.
- Sec. 102. Definitions.

Subtitle B—Competitive Statutes

- Sec. 111. Contracts: planning, solicitation, evaluation, and award procedures.
- Sec. 112. Kinds of contracts.
- Sec. 113. Encouragement of competition and cost savings.
- Sec. 114. Advocates for competition.
- Sec. 115. Preference for nondevelopmental items.

Subtitle C—Truth in Negotiations Act

- Sec. 121. Stabilization of dollar threshold of applicability.
- Sec. 122. Exceptions to cost or pricing data requirements.
- Sec. 123. Limitation on authority to require a submission not otherwise required.
- Sec. 124. Additional special rules for commercial items.
- Sec. 125. Right of United States to examine contractor records.
- Sec. 126. Required regulations.
- Sec. 127. Consistency of time references.
- Sec. 128. Repeal of superseded provision.

Subtitle D—Research and Development

- Sec. 131. Delegation of contracting authority.
- Sec. 132. Research projects.
- Sec. 133. Awards of grants and contracts to colleges and universities: requirement of competition.
- Sec. 134. Elimination of inflexible terminology regarding coordination and communication of defense research activities.
- Sec. 135. Cooperative agreements and other transactions.
- Sec. 136. Contracts for research.

Subtitle E—Procurement Protests

- Sec. 141. Sense of Congress on single forum for review of contract protests.
- Sec. 142. Review of protests; effect on contracts pending decision.
- Sec. 143. Decisions on protests.
- Sec. 144. Regulations; authority of Comptroller General to verify assertions.
- Sec. 145. Nonexclusivity of remedies; matters included in agency record.

Subtitle F—Other Related Statutes

- Sec. 151. Delegation.
- Sec. 152. Determinations and decisions.

- Sec. 153. Undefined contractual actions: restrictions.
- Sec. 154. Production special tooling and production special test equipment: contract terms and conditions.
- Sec. 155. Contracts: regulations for bids.
- Sec. 156. Supplies: identification of supplier and sources.

TITLE II—CONTRACT ADMINISTRATION

- Sec. 201. Contract payments.
- Sec. 202. Cost principles.
- Sec. 203. Consolidation and revision of authority to examine records of contractors.
- Sec. 204. Administration of contract provisions relating to price, delivery, and product quality.

TITLE III—MAJOR SYSTEMS AND COMMERCIAL ACTIVITIES

Subtitle A—Major Systems

- Sec. 301. Selected acquisition reports; unit cost reports.
- Sec. 302. Unit cost reports.
- Sec. 303. Independent cost estimates; operational manpower requirements.
- Sec. 304. Enhanced program stability.
- Sec. 305. Major programs: competitive prototyping.
- Sec. 306. Major programs: competitive alternative sources.

Subtitle B—Testing Statutes

- Sec. 311. Repeal of testing requirement for wheeled or tracked vehicles.
- Sec. 312. Major systems and munitions programs: survivability and lethality testing.
- Sec. 313. Operational test and evaluation of defense acquisition programs.
- Sec. 314. Low-rate initial production of new systems.

Subtitle C—DOD Commercial and Industrial Activities

- Sec. 321. Factories and arsenals: manufacture at.

Subtitle D—Industrial Base and Manufacturing Technology Laws

- Sec. 331. Policy objectives relating to defense international trade.

Subtitle E—Miscellaneous

- Sec. 341. Obligation of funds: limitation.
- Sec. 342. Repeal of limitation on length of contracts.

TITLE IV—SMALL PURCHASE PROCEDURES AND SMALL BUSINESS PROVISIONS

- Sec. 401. Use of small purchase procedures for procurements conducted through Federal acquisition computer network system; implementation of system.
- Sec. 402. Small business reservation.
- Sec. 403. Exemptions for contracts not in excess of the small purchase threshold.
- Sec. 404. Small business amendments.
- Sec. 405. Notification of small business concerns in locality of procuring agency.

TITLE V—INTELLECTUAL PROPERTY

Sec. 501. Department of Defense acquisition of intellectual property rights.

TITLE VI—STANDARDS OF CONDUCT

Subtitle A—Ethics Provisions

Sec. 601. Amendments to Office of Federal Procurement Policy Act.

Sec. 602. Repeal of superseded and obsolete laws.

Subtitle B—Additional Amendments

Sec. 611. Contracting functions performed by Federal personnel.

Sec. 612. Repeal of executed requirement for study and report.

Sec. 613. Waiting period for significant changes proposed for acquisition regulations.

TITLE VII—DEFENSE TRADE AND COOPERATION

Sec. 701. International cooperative agreements.

Sec. 702. Acquisition, cross-servicing agreements, and standardization.

TITLE VIII—COMMERCIAL ITEM ACQUISITION

Sec. 801. Procurement of commercial and nondevelopmental items.

TITLE IX—EFFECTIVE DATE

Sec. 901. Effective date.

1 **TITLE I—CONTRACT FORMATION**

2 **Subtitle A—Congressional Policy,**

3 **Definitions, and Applicability**

4 **SEC. 101. CONGRESSIONAL DEFENSE PROCUREMENT POL-**

5 **ICY.**

6 Section 2301 of title 10, United States Code, is
7 amended to read as follows:

8 **“§ 2301. Congressional defense procurement policy**

9 “(a) The Congress finds that in order to ensure na-
10 tional defense preparedness; conserve fiscal resources; en-
11 hance science and technology, research and development,
12 and production capability; provide for continued develop-
13 ment and preservation of an efficient and responsive de-

1 fense industrial base; and ensure the financial and ethical
2 integrity of defense procurement programs, it is in the in-
3 terest of the United States that property and services be
4 acquired for the Department of Defense in the most time-
5 ly, economic, and efficient manner consistent with achiev-
6 ing an optimum balance among efficient processes, full
7 and open access to the procurement system, and sound
8 implementation of socioeconomic policies. It is therefore
9 the policy of Congress that—

10 “(1) full and open competitive procedures shall
11 be used by the Department of Defense in accordance
12 with the requirements of this chapter;

13 “(2) to the maximum extent practicable, the
14 Department of Defense shall acquire commercial
15 items to meet its needs and shall require prime con-
16 tractors and subcontractors, at all levels, which fur-
17 nish other than commercial items, to incorporate to
18 the maximum extent practicable commercial items as
19 components of items being supplied to the Depart-
20 ment;

21 “(3) when commercial items and components
22 are not available, practicable, or cost effective, the
23 Department of Defense shall acquire, and shall re-
24 quire prime contractors and subcontractors to incor-

1 porate, nondevelopmental items and components to
2 the maximum extent practicable;

3 “(4) property and services for the Department
4 of Defense may be acquired by any kind of contract,
5 other than cost-plus-a-percentage-of-cost contracts,
6 but including multiyear contracts, that will promote
7 the interest of the United States and will provide for
8 appropriate allocation of risk between the Govern-
9 ment and the contractor with due regard to the na-
10 ture of the property or services to be acquired;

11 “(5) contracts, when appropriate, shall provide
12 incentives to contractors to improve productivity
13 through investment in capital facilities, equipment,
14 flexible manufacturing processes, and advanced and
15 dual-use technology;

16 “(6) contracts for advance procurement of com-
17 ponents, parts, and materials necessary for manufac-
18 ture or for logistics support of a weapon system
19 should, if practicable, be entered into in a manner
20 to achieve economic-lot purchases and more efficient
21 production rates;

22 “(7) procurement protests and disputes be fair-
23 ly and expeditiously resolved through uniform inter-
24 pretation of relevant laws and regulations;

1 “(8) the head of an agency shall use advance
2 procurement planning and market research and de-
3 velop contract requirements in such a manner as is
4 necessary to obtain full and open competition with
5 due regard to the nature of the property or services
6 to be acquired; but may restrict competitions to sup-
7 pliers of commercial items to foster accomplishment
8 of the above objective; and

9 “(9) the head of an agency shall develop and
10 maintain an acquisition career management program
11 to ensure a professional acquisition work force in ac-
12 cordance with the requirements of chapter 87 of this
13 title.

14 “(b) Further, it is the policy of Congress that pro-
15 curement policies and procedures for the agencies named
16 in section 2303 of this title shall, in accordance with the
17 requirements of this title—

18 “(1) be issued in accordance with and conform
19 to the requirements of sections 22 and 25 of the Of-
20 fice of Federal Procurement Policy Act (41 U.S.C.
21 418b and 421);

22 “(2) promote and implement the Congressional
23 policies in subsection (a) of this section and section
24 2 of the Office of Federal Procurement Policy Act
25 (41 U.S.C. 401);

1 “(3) be implemented to support the require-
2 ments of such agencies in time of war or national
3 emergency as well as in peacetime;

4 “(4) promote responsiveness of the procurement
5 system to agency needs by—

6 “(A) simplifying and streamlining procure-
7 ment processes; and

8 “(B) providing incentives to encourage
9 contractors to take actions and make rec-
10 ommendations that would reduce the costs of
11 property or services to be acquired;

12 “(5) facilitate the acquisition of commercial
13 items and commercial components at or based on
14 commercial market prices, without requiring contrac-
15 tors to change their business practices; and

16 “(6) promote the acquisition and use of com-
17 mercial items, commercial components, and
18 nondevelopmental items by requiring descriptions of
19 agency requirements, whenever practicable, in terms
20 of functions to be performed or performance re-
21 quired.

22 “(c) Further, it is the policy of Congress that 20 per-
23 cent of the purchases and contracts entered into under
24 this chapter be placed with small business concerns.

1 “(d) It is also the policy of Congress that qualified
2 nonprofit agencies for the blind or severely handicapped
3 (as defined in section 2410d(b) of this title) shall be af-
4 farded the maximum practicable opportunity to provide
5 approved commodities and services (as defined in such sec-
6 tion) as subcontractors and suppliers under contracts
7 awarded by the Department of Defense.”.

8 **SEC. 102. DEFINITIONS.**

9 Section 2302 of title 10, United States Code, is
10 amended—

11 (1) by striking out paragraph (3) and inserting
12 in lieu thereof the following:

13 “(3) The terms ‘procurement’, ‘procurement
14 system’, ‘standards’, ‘full and open competition’, ‘re-
15 sponsible source’, ‘technical data’, and ‘major sys-
16 tem’ have the meanings provided such terms by sec-
17 tion 4 of the Office of Federal Procurement Policy
18 Act (41 U.S.C. 403).”;

19 (2) by striking out paragraph (4) and inserting
20 in lieu thereof the following:

21 “(4) The term ‘small purchase threshold’ has
22 the meaning provided that term by section 4(11) of
23 the Office of Federal Procurement Policy Act (41
24 U.S.C. 403(11)).”;

1 (3) by striking out paragraph (5) and inserting
2 in lieu thereof the following:

3 “(5) The term ‘nondevelopmental item’ means
4 any item of supply that is not a commercial item but
5 which is—

6 “(A) previously developed and in use by a
7 department or agency of the United States, a
8 State or local government, or a foreign govern-
9 ment with which the United States has a mu-
10 tual defense cooperation agreement;

11 “(B) previously developed and requires
12 only minor modification in order to meet the re-
13 quirements of the procuring agency; or

14 “(C) currently being produced but not yet
15 in use.”; and

16 (4) by striking out paragraph (7) and inserting
17 in lieu thereof the following:

18 “(7)(A) The term ‘commercial item’ means—

19 “(i) property other than real property, or
20 a combination of such property and related inci-
21 dental services of the type customarily com-
22 bined and sold, leased, or licensed in combina-
23 tion, that—

24 “(I) has been sold, leased, or licensed
25 to the general public;

1 “(II) has not been sold, leased, or li-
2 censed to the general public, but has been
3 offered for sale, lease, or license to the
4 general public; or

5 “(III) is not yet available in the com-
6 mercial marketplace, but will be available
7 for commercial delivery in a reasonable pe-
8 riod of time; and

9 “(ii) services used to support property and
10 combinations of property and services described
11 in clause (i), whether such services are procured
12 with the property or combination of property
13 and services or under separate contract, if such
14 services are or will be offered contempora-
15 neously to the general public under similar
16 terms and conditions.

17 “(B) With respect to a specific solicitation, an
18 item meeting the criteria set forth in subparagraph
19 (A) if unmodified will be deemed to be a commercial
20 item when modified for sale to the Government if
21 the modifications required to meet Government re-
22 quirements—

23 “(i) are modifications of the type cus-
24 tomarily provided in the commercial market-
25 place; or

1 “(ii) would not significantly alter the non-
2 governmental function or purpose of the item in
3 order to meet the requirements or specifications
4 of the procuring agency.”.

5 **Subtitle B—Competitive Statutes**

6 **SEC. 111. CONTRACTS: PLANNING, SOLICITATION, EVALUA-** 7 **TION, AND AWARD PROCEDURES.**

8 Section 2305 of title 10, United States Code, is
9 amended—

10 (1) in subsection (a)(2), by striking out “(other
11 than for small purchases)” in the first sentence and
12 inserting in lieu thereof “(estimated to be in excess
13 of the small purchase threshold)”;

14 (2) in subsection (a), by redesignating para-
15 graph (3) as paragraph (4);

16 (3) in subsection (a), by adding after paragraph
17 (2) the following new paragraph (3):

18 “(3) The head of an agency, in issuing a solicitation
19 for a contract to be awarded using sealed bid procedures,
20 shall not include in such solicitation a clause providing for
21 the evaluation of prices under the contract for options to
22 purchase additional supplies or services under the contract
23 unless the head of the agency has determined that there
24 is a reasonable likelihood that the options will be exer-
25 cised.”;

1 (4) by adding at the end of subsection
2 (b)(4)(B) the following: “The regulations implement-
3 ing this chapter shall—

4 “(i) establish the criteria for determining
5 whether an unsuccessful offeror is entitled to a de-
6 briefing;

7 “(ii) provide that any required debriefing shall
8 be conducted to the maximum extent practicable
9 within 15 calendar days after the date of award; and

10 “(iii) provide that any required debriefing con-
11 tain information on the strengths and weaknesses of
12 that offeror’s proposal.”; and

13 (5) in subsection (b), by redesignating para-
14 graph (5) as paragraph (7) and inserting after para-
15 graph (4) the following new paragraphs:

16 “(5) Where a protest is filed pursuant to the proce-
17 dures in subchapter V of chapter 35 of title 31, United
18 States Code (31 U.S.C. 3551 et seq.) and where an actual
19 or prospective offeror so requests, a file of the protest shall
20 be established by the contracting activity and reasonable
21 access shall be provided to actual or prospective offerors.
22 This file should contain such information as would ordi-
23 narily be releasable under the section 552 of title 5, Unit-
24 ed States Code (commonly referred to as the ‘Freedom
25 of Information Act’).

1 “(6) If a protest is filed and if the head of the agency
2 determines that a solicitation, proposed award, or award
3 does not comply with a statute or regulation, the head of
4 the agency may take any action which the agency is au-
5 thorized to take under subparagraphs (A) through (F) of
6 section 3554(b)(1) of title 31, United States Code.”.

7 **SEC. 112. KINDS OF CONTRACTS.**

8 Section 2306 of title 10, United States Code, is
9 amended—

10 (1) by striking out the first sentence of sub-
11 section (b) and inserting in lieu thereof the follow-
12 ing: “Each contract in an amount in excess of the
13 small purchase threshold awarded under this chapter
14 after using noncompetitive procedures shall contain
15 a warranty that the contractor has employed or re-
16 tained no person or selling agency to solicit or obtain
17 the contract under an understanding or agreement
18 for a commission, percentage, brokerage, or contin-
19 gent fee, except a bona fide employee or established
20 commercial or selling agency maintained by the con-
21 tractor to obtain business.”;

22 (2) by striking out subsections (c), (d), and (f);

23 (3) by redesignating subsection (e) as sub-
24 section (c); and

1 (4) by redesignating subsections (g) and (h) as
2 subsections (d) and (e), respectively.

3 **SEC. 113. ENCOURAGEMENT OF COMPETITION AND COST**
4 **SAVINGS.**

5 (a) REPEAL.—Section 2317 of title 10, United States
6 Code, is hereby repealed.

7 (b) TECHNICAL AMENDMENT.—The table of sections
8 at the beginning of chapter 137 of such title is amended
9 by striking out the item relating to section 2317.

10 **SEC. 114. ADVOCATES FOR COMPETITION.**

11 Section 2318 of title 10, United States Code, is
12 amended by striking out subsection (c).

13 **SEC. 115. PREFERENCE FOR NONDEVELOPMENTAL ITEMS.**

14 (a) REPEAL.—Section 2325 of title 10, United States
15 Code, is hereby repealed.

16 (b) TECHNICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 137 of such title is amended
18 by striking out the item relating to section 2325.

19 **Subtitle C—Truth in Negotiations**
20 **Act**

21 **SEC. 121. STABILIZATION OF DOLLAR THRESHOLD OF AP-**
22 **PLICABILITY.**

23 Section 2306a(a)(1)(A) of title 10, United States
24 Code, is amended—

1 (1) in clause (i), by striking out “and before
2 January 1, 1996,”; and

3 (2) in clause (ii), by striking out “or after De-
4 cember 31, 1995,”.

5 **SEC. 122. EXCEPTIONS TO COST OR PRICING DATA RE-**
6 **QUIREMENTS.**

7 Section 2306a(b) of title 10, United States Code, is
8 amended to read as follows:

9 “(b) EXCEPTIONS.—(1) This section need not be ap-
10 plied to a contract or subcontract—

11 “(A) for which the price agreed upon is based
12 on—

13 “(i) adequate price competition;

14 “(ii) established catalog or market prices
15 of commercial items or of services regularly
16 used for other than Government purposes, as
17 the case may be, that are sold in substantial
18 quantities to the general public; or

19 “(iii) prices set by law or regulation; or

20 “(B) in an exceptional case when the head of
21 the agency determines that the requirements of this
22 section may be waived and states in writing the rea-
23 sons for such determination.

24 “(2) This section need not be applied to a modifica-
25 tion of a contract or subcontract if—

1 “(A) the contract or subcontract being modified
2 is one to which this section need not be applied by
3 reason of clause (i) or (ii) of paragraph (1)(A); and

4 “(B) the modification would not change the
5 contract or subcontract, as the case may be, from a
6 contract or subcontract for the acquisition of a com-
7 mercial item to a contract or subcontract for the ac-
8 quisition of a noncommercial item.”.

9 **SEC. 123. LIMITATION ON AUTHORITY TO REQUIRE A SUB-**
10 **MISSION NOT OTHERWISE REQUIRED.**

11 Section 2306a(c) of title 10, United States Code, is
12 amended by striking out “by subsection (a), such data
13 may nevertheless be required to be submitted by the head
14 of the agency if” and inserting in lieu thereof “by reason
15 of subsection (b), submission of such data may not be re-
16 quired unless”.

17 **SEC. 124. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**
18 **ITEMS.**

19 Section 2306a of title 10, United States Code, is
20 amended—

21 (1) by redesignating subsections (d), (e), (f),
22 and (g) as subsections (e), (f), (g), and (i), respec-
23 tively; and

24 (2) by inserting after subsection (c) the follow-
25 ing new subsection (d):

1 “(d) ADDITIONAL EXCEPTION REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent practicable, the head of an agency shall—

2 “(A) conduct procurements of commercial items on a competitive basis; and

3 “(B) exercise the authority provided in subsection (b)(1)(A) to exempt the contracts and subcontracts under such procurements from the requirements of subsection (a).

4 “(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer shall nonetheless exempt a contract or subcontract under the procurement from the requirements of subsection (a) if—

5 “(A) in accordance with regulations implementing this paragraph, the offeror, contractor, or subcontractor, as the case may be, provides the contracting officer with information on the price charged by such offeror, contractor, or subcontractor for the same or similar products in the commercial marketplace; and

6 “(B) the contracting officer determines in writing that the information provided is adequate for

1 evaluating the reasonableness of the price of the con-
2 tract or subcontract.

3 “(3)(A) The Government shall be entitled to a reduc-
4 tion in price and the return of any overpayment, with in-
5 terest, if an offeror, contractor, or subcontractor provides
6 materially inaccurate or misleading information to the
7 contracting officer pursuant to paragraph (2).

8 “(B) Nothing in subparagraph (A) is intended to pre-
9 clude the head of an agency from negotiating any contract
10 clause that provides additional price adjustment authority
11 for the protection of the Government’s interest in specific
12 types of contracts, including multiple ordering agree-
13 ments.

14 “(4)(A) The head of an agency shall have the right
15 to examine all information provided by an offeror, contrac-
16 tor, or subcontractor pursuant to paragraph (2) and all
17 books and records of such offeror, contractor, or sub-
18 contractor that directly relate to the information provided
19 in order to determine whether such information is materi-
20 ally inaccurate or misleading.

21 “(B) The right under subparagraph (A) shall expire
22 1 year after the date of award of the contract, or 1 year
23 after the date of the modification of the contract, with
24 respect to which the information was provided.”.

1 **SEC. 125. RIGHT OF UNITED STATES TO EXAMINE CON-**
2 **TRACTOR RECORDS.**

3 Section 2306a of title 10, United States Code, is
4 amended by striking out subsection (g), as redesignated
5 by section 124(1), and inserting in lieu thereof the follow-
6 ing:

7 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
8 TRACTOR RECORDS.—For the purpose of evaluating the
9 accuracy, completeness, and currency of cost or pricing
10 data required to be submitted by this section, the head
11 of an agency shall have the rights provided by section
12 2313 of this title.”.

13 **SEC. 126. REQUIRED REGULATIONS.**

14 Section 2306a of title 10, United States Code, as
15 amended by sections 124 and 125, is further amended by
16 inserting after subsection (g) the following new subsection:

17 “(h) REQUIRED REGULATIONS.—(1) The Secretary
18 of Defense shall prescribe regulations identifying the type
19 of procurements for which contracting officers should con-
20 sider requiring the submission of certified cost or pricing
21 data under this section.

22 “(2) The Secretary also shall prescribe regulations
23 concerning the types of information that offerors must
24 submit for a contracting officer to consider in determining
25 whether the price of a procurement to the Government is
26 fair and reasonable when certified cost or pricing data are

1 not required to be submitted under this section because
2 the price of the procurement to the United States is not
3 expected to exceed \$500,000. Such information, at a mini-
4 mum, shall include appropriate information on the prices
5 at which such offeror has previously sold the same or simi-
6 lar products.”.

7 **SEC. 127. CONSISTENCY OF TIME REFERENCES.**

8 Section 2306a of title 10, United States Code, as
9 amended by sections 124, 125, and 126, is further amend-
10 ed—

11 (1) in subparagraphs (A)(ii) and (B)(ii) of sub-
12 section (e)(4), by inserting “or, if applicable consist-
13 ent with paragraph (1)(B), another date agreed
14 upon between the parties” after “(or price of the
15 modification)”; and

16 (2) in subsection (i), by inserting “or, if appli-
17 cable consistent with subsection (d)(1)(B), another
18 date agreed upon between the parties” after “(or the
19 price of a contract modification)”.

20 **SEC. 128. REPEAL OF SUPERSEDED PROVISION.**

21 Subsection (c) of section 803 of Public Law 101–510
22 (10 U.S.C. 2306a note) is repealed.

Subtitle D—Research and Development

SEC. 131. DELEGATION OF CONTRACTING AUTHORITY.

Section 2356 of title 10, United States Code, is amended to read as follows:

“§ 2356. Contracts: delegations

“(a) AUTHORITY.—The Secretary of a military department may delegate any authority under section 1584, 2353, or 2354 of this title to—

“(1) the Under Secretary of his department;

“(2) an Assistant Secretary of his department;

“(3) a Deputy Assistant Secretary of his department; or

“(4) except as provided in subsection (b), the chief, and one assistant to the chief, of any technical service, bureau, or office.

“(b) LIMITATION.—The authority of the Secretary of a military department under section 2353(b)(3) of this title may not be delegated to a person described in subsection (a)(4).”.

SEC. 132. RESEARCH PROJECTS.

(a) AUTHORITY TO CONDUCT BASIC, ADVANCED, AND APPLIED RESEARCH.—Section 2358 of title 10, United States Code, is amended to read as follows:

1 **“§ 2358. Research projects**

2 “(a) AUTHORITY.—The Secretary of Defense or the
3 Secretary of a military department may engage in basic,
4 advanced, and applied research and development projects
5 that—

6 “(1) are necessary to the responsibilities of
7 such Secretary’s department in the field of basic, ad-
8 vanced, and applied research and development; and

9 “(2) either—

10 “(A) relate to weapons systems and other
11 military needs; or

12 “(B) are of potential interest to such de-
13 partment.

14 “(b) AUTHORIZED MEANS.—The Secretary of De-
15 fense or the Secretary of a military department may per-
16 form research and development projects—

17 “(1) by contract, cooperative agreement, or
18 other transaction with, or by grant to, educational or
19 research institutions, private businesses, or other
20 agencies of the United States;

21 “(2) by using employees and consultants of the
22 Department of Defense; or

23 “(3) through one or more of the military de-
24 partments.

25 “(c) REQUIREMENT OF POTENTIAL MILITARY IN-
26 TEREST.—Funds appropriated to the Department of De-

1 fense or to a military department may not be used to fi-
 2 nance any research project or study unless the project or
 3 study is, in the opinion of the Secretary of Defense or the
 4 Secretary of that military department, respectively, of po-
 5 tential interest to the Department of Defense or to such
 6 military department, respectively.”.

7 (b) AUTHORITY RELATED TO ADVANCED RESEARCH
 8 PROJECTS.—

9 (1) REPEAL OF REDUNDANT AUTHORITY.—Sec-
 10 tion 2371 of such title is amended—

11 (A) by striking out subsection (a);

12 (B) by redesignating subsections (b), (c),
 13 (d), (e), (f), and (g) as subsections (a), (b), (c),
 14 (d), (e), and (f), respectively;

15 (C) in subsection (a), as redesignated by
 16 subparagraph (B)—

17 (i) in paragraph (1), by striking out
 18 “subsection (a)” and inserting in lieu
 19 thereof “section 2358 of this title”; and

20 (ii) in paragraph (2), by striking out
 21 “subsection (e)” and inserting in lieu
 22 thereof “subsection (d)”;

23 (D) in subsection (d), as redesignated by
 24 subparagraph (B), by striking out “subsection

1 (a)” and inserting in lieu thereof “section 2358
2 of this title”; and

3 (E) in subsection (e), as redesignated by
4 subparagraph (B)—

5 (i) in paragraph (4), by striking out
6 “subsection (b)” and inserting in lieu
7 thereof “subsection (a)”; and

8 (ii) in paragraph (5), by striking out
9 “subsection (e)” and inserting in lieu
10 thereof “subsection (d)”.

11 (2) CONSISTENCY OF TERMINOLOGY.—Such
12 section, as amended by paragraph (1), is further
13 amended—

14 (A) in subsection (c)(1), by inserting “and
15 development” after “research” both places it
16 appears;

17 (B) in subsections (d) and (e)(3), by strik-
18 ing out “advanced research” and inserting in
19 lieu thereof “research and development”; and

20 (C) in subsection (e)(1), by striking out
21 “advanced research is” and inserting in lieu
22 thereof “research and development are”.

23 (c) REDUNDANT AND OBSOLETE AUTHORITY FOR
24 THE ARMY.—

1 (1) REPEAL.—Section 4503 of title 10, United
2 States Code, is repealed.

3 (2) TECHNICAL AMENDMENT.—The table of
4 sections at the beginning of chapter 431 of such title
5 is amended by striking out the item relating to sec-
6 tion 4503.

7 (d) REDUNDANT AND OBSOLETE AUTHORITY FOR
8 THE AIR FORCE.—

9 (1) REPEAL.—Section 9503 of title 10, United
10 States Code, is repealed.

11 (2) TECHNICAL AMENDMENT.—The table of
12 sections at the beginning of chapter 931 of such title
13 is amended by striking out the item relating to sec-
14 tion 9503.

15 **SEC. 133. AWARDS OF GRANTS AND CONTRACTS TO COL-**
16 **LEGES AND UNIVERSITIES: REQUIREMENT**
17 **OF COMPETITION.**

18 (a) REPEAL.—Subsection (c) of section 2361 of title
19 10, United States Code, is repealed.

20 (b) AMENDMENT.—Section 2361 of title 10, United
21 States Code, is amended by inserting “or nonprofit organi-
22 zation other than a federally funded research and develop-
23 ment center (FFRDC)” after “college or university” in
24 each place it appears in subsections (a) and (b).

1 **SEC. 134. ELIMINATION OF INFLEXIBLE TERMINOLOGY RE-**
2 **GARDING COORDINATION AND COMMUNICA-**
3 **TION OF DEFENSE RESEARCH ACTIVITIES.**

4 Section 2364 of title 10, United States Code, is
5 amended—

6 (1) in subsection (b)(5), by striking out “mile-
7 stone 0, milestone I, and milestone II decisions” and
8 inserting in lieu thereof “acquisition program deci-
9 sions”; and

10 (2) in subsection (c), by striking out para-
11 graphs (2), (3), and (4) and inserting in lieu thereof
12 the following:

13 “(2) The term ‘acquisition program decisions’
14 has the meaning given such term in regulations pre-
15 scribed by the Secretary of Defense for the purposes
16 of this section.”.

17 **SEC. 135. COOPERATIVE AGREEMENTS AND OTHER TRANS-**
18 **ACTIONS.**

19 (a) **NONPROCUREMENT AGREEMENTS.**—Section
20 2371 of title 10, United States Code, is amended as fol-
21 lows:

22 (1) Subsection (a) is amended by striking out
23 “cooperative agreements and other transactions”
24 and inserting in lieu thereof “nonprocurement agree-
25 ments”.

1 (2) Subsection (b)(1) is amended by striking
2 out “Cooperative agreements and other trans-
3 actions” and inserting in lieu thereof
4 “Nonprocurement agreements”.

5 (3) Subsection (d) is amended by striking out
6 “cooperative agreement or other transaction” each
7 place it appears and inserting in lieu thereof
8 “nonprocurement agreement”.

9 (4) Subsection (e) is amended by striking out
10 “cooperative agreements and other transactions”
11 and inserting in lieu thereof “nonprocurement agree-
12 ments”.

13 (5) Subsection (f) is amended—

14 (A) in the matter before paragraph (1)—

15 (i) by striking out “cooperative agree-
16 ments and other transactions (other than
17 contracts and grants)” and inserting in
18 lieu thereof “nonprocurement agreements”;
19 and

20 (ii) by striking out “cooperative agree-
21 ment and transaction” and inserting in
22 lieu thereof “nonprocurement agreement”;

23 (B) in paragraph (1)—

24 (i) by striking out “cooperative agree-
25 ment or other transaction (as the case may

1 be)” and inserting in lieu thereof
2 “nonprocurement agreement”; and

3 (ii) by striking out “agreement or
4 transaction.” and inserting in lieu thereof
5 “agreement.”; and

6 (C) in paragraph (4), by striking out “co-
7 operative agreement or other transaction” and
8 inserting in lieu thereof “nonprocurement
9 agreement”.

10 (b) DEFINITION.—Section 2371 of such title is fur-
11 ther amended by adding at the end the following new sub-
12 section:

13 “(h) DEFINITION.—In this section, the term
14 ‘nonprocurement agreement’ means an agreement other
15 than—

16 “(1) a procurement contract, grant, or coopera-
17 tive agreement, as those terms are used in sections
18 6301 through 6308 of title 31; and

19 “(2) a cooperative research and development
20 agreement (CRDA), as defined in section 12 of the
21 Stevenson-Wydler Technology Innovation Act of
22 1980 (15 U.S.C. 3710a).”.

23 (c) OTHER DEFENSE RESEARCH AND DEVELOP-
24 MENT AGENCIES.—Subsections (a) and (g) of section
25 2371 of such title are each amended by inserting “and

1 other defense research and development agencies” after
2 “Defense Advanced Research Projects Agency”.

3 (d) SECTION HEADING AMENDMENT.—(1) The head-
4 ing of section 2371 of such title is amended to read as
5 follows:

6 “§ 2371. **Advanced research projects: nonprocurement**
7 **agreements”.**

8 (2) The table of sections at the beginning of chapter
9 139 of such title is amended by striking out the item relat-
10 ing to section 2371 and inserting in lieu thereof the follow-
11 ing:

“2371. Advanced research projects: nonprocurement agreements.”.

12 **SEC. 136. CONTRACTS FOR RESEARCH.**

13 (a) REPEAL.—Section 7522 of title 10, United States
14 Code, is hereby repealed.

15 (b) TECHNICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 645 of such title is amended
17 by striking out the item related to section 7522.

18 **Subtitle E—Procurement Protests**

19 **SEC. 141. SENSE OF CONGRESS ON SINGLE FORUM FOR RE-**
20 **VIEW OF CONTRACT PROTESTS.**

21 It is the sense of Congress that there should be a
22 single forum, in the Office of the Comptroller General in
23 the General Accounting Office, to review government con-
24 tracting protests.

1 **SEC. 142. REVIEW OF PROTESTS; EFFECT ON CONTRACTS**

2 **PENDING DECISION.**

3 Section 3553 of title 31, United States Code, is
4 amended—

5 (1) in subsection (b)(1), by striking out “work-
6 ing day” and inserting in lieu thereof “calender day
7 from the date”;

8 (2) in subsection (b)(2)(A), by striking out “25
9 working days” and inserting in lieu thereof “25 cal-
10 ender days”;

11 (3) in subsection (b)(2)(C), by striking out “10
12 working days” and inserting in lieu thereof “25 cal-
13 endar days”;

14 (4) by striking out “days thereafter” in sub-
15 section (c)(3) and inserting in lieu thereof “calender
16 days from the date of the finding”;

17 (5) by striking out paragraph (1) of subsection
18 (d) and inserting in lieu thereof the following:

19 “(1) If a Federal agency receives notice of a
20 protest under this section after the contract has
21 been awarded but (A) within 10 calendar days after
22 the date of the contract award, or (B) within five
23 calendar days from the debriefing date offered to an
24 unsuccessful offeror for any requested and required
25 debriefing (provided that the unsuccessful offeror re-
26 quested the debriefing in writing within three cal-

1 endar days after the contract award), whichever is
2 later, the Federal agency (except as provided under
3 paragraph (2)) shall, upon receipt of that notice, im-
4 mediately direct the contractor to cease performance
5 under the contract and to suspend any related ac-
6 tivities that may result in additional obligations
7 being incurred by the United States under that con-
8 tract. Performance of the contract may not be re-
9 sumed while the protest is pending.”; and

10 (6) by striking out subsection (f) and inserting
11 in lieu thereof the following:

12 “(f)(1) Within such deadlines as the Comptroller
13 General prescribes and subject to any order made under
14 paragraph (2), upon request each Federal agency shall
15 provide to an interested party any document relevant to
16 a protested procurement action (including the report re-
17 quired by subsection (b)(2)) that would not give that party
18 a competitive advantage and that the party is otherwise
19 authorized by law to receive.

20 “(2) The Comptroller General, under the procedures
21 established pursuant to section 3555 of this title, may
22 make an appropriate protective order specifying that, not-
23 withstanding any other provision of law—

1 “(A) access to documents or information, in-
2 cluding any Federal agency documents or informa-
3 tion, may be had on specific terms and conditions;

4 “(B) procurement sensitive, trade secret, or
5 other proprietary and confidential research, develop-
6 ment, or commercial information may not be dis-
7 closed or may be disclosed only in a designated way;
8 and

9 “(C) any hearing shall be conducted with no
10 one present except persons designated by the Comp-
11 troller General.”.

12 **SEC. 143. DECISIONS ON PROTESTS.**

13 Section 3554 of title 31, United States Code, is
14 amended—

15 (1) in subsection (a)(1), by striking out “90
16 working” and inserting in lieu thereof “120 cal-
17 endar”;

18 (2) in subsection (a)(2), by striking out “45”
19 and inserting in lieu thereof “60 calendar”;

20 (3) in subsection (a), by redesignating para-
21 graph (3) as paragraph (4) and inserting after para-
22 graph (2) the following new paragraph (3):

23 “(3) Amendments to protests which add new
24 grounds of protest should be resolved, to the maxi-
25 mum extent practicable, within the time limits estab-

1 lished under paragraph (1) of this subsection for the
2 initial protest. If amended protests cannot be re-
3 solved within such time limit, the Comptroller Gen-
4 eral may resolve the amended protest through the
5 express option under paragraph (2) of this sub-
6 section.”;

7 (4) by adding at the end of subsection (a) the
8 following new paragraph:

9 “(5) If the Comptroller General expressly finds
10 that a protest or a portion of a protest is frivolous
11 or has not been brought or pursued in good faith,
12 the protester or other interested party who joins the
13 protest shall be liable to the United States for pay-
14 ment of, and the Comptroller General shall order the
15 protester or other interested party to pay, all or that
16 portion of the United States costs, for which such a
17 finding is made, of reviewing the protest, including
18 the fees and other expenses (as defined in section
19 2412(d)(2)(A) of title 28) incurred by the United
20 States in defending the protest, unless (1) special
21 circumstances would make such payment unjust, or
22 (2) the protester obtains documents or other infor-
23 mation for the first time, after the protest is filed
24 with the Comptroller General, that establishes that
25 the protest or a portion of the protest is frivolous or

1 has not been brought in good faith, and the pro-
2 tester then promptly withdraws the protest or por-
3 tion of the protest.”;

4 (5) in subsection (c)(1)(A) by adding “and con-
5 sultant and expert witness fees” after “attorneys’
6 fees”; and

7 (6) in subsection (e)(2) by adding at the end
8 the following: “The report shall also describe each
9 instance where a final decision was not rendered
10 within 120 calendar days.”.

11 **SEC. 144. REGULATIONS; AUTHORITY OF COMPTROLLER**

12 **GENERAL TO VERIFY ASSERTIONS.**

13 Section 3555 of title 31, United States Code, is
14 amended to read as follows:

15 **“§ 3555. Regulations; authority of Comptroller Gen-
16 eral to verify assertions**

17 “(a) The Comptroller General shall prescribe such
18 procedures as may be necessary to the expeditious decision
19 of protests under this subchapter, including procedures for
20 accelerated resolution of protests under the express option
21 authorized by section 3554(a)(2) of this title. Such proce-
22 dures shall provide that the protest process may not be
23 delayed by the failure of a party to make a filing within
24 the time provided for the filing.

1 “(b) In computing any period of time prescribed or
2 allowed by this subchapter, the procedures shall provide
3 that the day of the act, event, or default from which the
4 designated period of time begins to run shall not be in-
5 cluded. The last day of the period so computed shall be
6 included, unless it is a Saturday, a Sunday, or a legal holi-
7 day, or, when the act to be done is the filing of a paper
8 at the General Accounting Office or a Federal agency, a
9 day on which weather or other conditions have made the
10 General Accounting Office or Federal agency inaccessible,
11 in which event the period runs until the end of the next
12 day that is not one of the previously mentioned days.

13 “(c) The procedures may provide for electronic filing
14 and dissemination of documents and information required
15 under this subchapter and in so providing shall consider
16 the ability of all parties to achieve electronic access to such
17 documents and records.

18 “(d) The procedures shall address the implementa-
19 tion of the provisions for payment of costs under section
20 3554(f), including the composition, proof, and calculation
21 of such costs, the special circumstances that make such
22 payment unjust, and what constitutes prompt withdrawal
23 of the protest.

24 “(e) The Comptroller General may use any authority
25 available under Chapter 7 of this title and this chapter

1 to verify assertions made by parties in protests under this
2 subchapter.”.

3 **SEC. 145. NONEXCLUSIVITY OF REMEDIES; MATTERS IN-**
4 **CLUDED IN AGENCY RECORD.**

5 The first sentence of section 3556 of title 31, United
6 States Code, is amended to read as follows: “This sub-
7 chapter does not give the Comptroller General exclusive
8 jurisdiction over protests, and nothing contained in this
9 subchapter shall affect the right of any interested party
10 to file a protest with the contracting agency or to file an
11 action in the United States Court of Federal Claims.”.

12 **Subtitle F—Other Related Statutes**

13 **SEC. 151. DELEGATION.**

14 (a) AMENDMENT OF TITLE 10.—Section 2311 of title
15 10, United States Code, is amended to read as follows:

16 **“§ 2311. Delegation**

17 “(a) Unless expressly prohibited by law, the head of
18 an agency may delegate, subject to his direction, to any
19 other officer or official of that agency, any power under
20 this chapter.

21 “(b) To facilitate the procurement of property and
22 services covered by this chapter by each agency named in
23 section 2303 of this title for any other agency, and to fa-
24 cilitate joint procurement by those agencies—

1 “(1) the head of an agency may, within his
2 agency, delegate functions and assign responsibilities
3 relating to procurement;

4 “(2) the heads of two or more agencies may by
5 agreement delegate procurement functions and as-
6 sign procurement responsibilities from one agency to
7 another of those agencies or to an officer or civilian
8 employee of another of those agencies; and

9 “(3) the heads of two or more agencies may
10 create joint or combined offices to exercise procure-
11 ment functions and responsibilities.

12 “(c)(1) The Secretary of Defense shall prescribe reg-
13 ulations that prohibit each military department participat-
14 ing in a joint acquisition program approved by the Under
15 Secretary of Defense for Acquisition from terminating or
16 substantially reducing its participation in such program
17 without the approval of the Under Secretary.

18 “(2) The regulations shall include the following
19 provisions:

20 “(A) A requirement that, before any such ter-
21 mination or substantial reduction in participation is
22 approved, the proposed termination or reduction be
23 reviewed by the Joint Requirements Oversight Coun-
24 cil of the Department of Defense.

1 “(B) A provision that authorizes the Under
2 Secretary of Defense for Acquisition to require a
3 military department approved for termination or
4 substantial reduction in participation in a joint ac-
5 quisition program to continue to provide some or all
6 of the funding necessary for the acquisition program
7 to be continued in an efficient manner.”.

8 (b) CONFORMING REPEAL.—(1) Section 2308 of title
9 10, United States Code, is repealed.

10 (2) The table of sections at the beginning of chapter
11 137 of such title is amended by striking out the item
12 related to section 2308.

13 **SEC. 152. DETERMINATIONS AND DECISIONS.**

14 Section 2310 of title 10, United States Code, is
15 amended to read as follows:

16 **“§ 2310. Determinations and decisions**

17 “Determinations and decisions required to be made
18 under this chapter by the head of an agency may be made
19 for an individual purchase or contract or for a class of
20 purchases or contracts except when expressly prohibited
21 under this title. Such determinations or decisions are
22 final.”.

1 **SEC. 153. UNDEFINITIZED CONTRACTUAL ACTIONS: RE-**
2 **STRICTIONS.**

3 Section 2326 of title 10, United States Code, is
4 amended—

5 (1) by striking out “AND EXPENDITURES” in
6 the heading of subsection (b);

7 (2) by striking out “or expended” in subsection
8 (b)(1)(B);

9 (3) by striking out “expend” in subsection
10 (b)(2) and inserting in lieu thereof “obligate”;

11 (4) by striking out “expended” and “expend”
12 and inserting in lieu thereof “obligated” and “obli-
13 gate”, respectively, in subsection (b)(3);

14 (5) by redesignating paragraph (4) in sub-
15 section (b) as paragraph (5); and

16 (6) by inserting after paragraph (3) in sub-
17 section (b) the following new paragraph:

18 “(4) The provisions of this subsection may be
19 waived if the head of the agency determines that
20 waiver is necessary in support of contingency oper-
21 ations, as defined in section 101(a)(13) of this title,
22 or is otherwise in the best interests of the United
23 States.”.

1 **SEC. 154. PRODUCTION SPECIAL TOOLING AND PRODUC-**
2 **TION SPECIAL TEST EQUIPMENT: CONTRACT**
3 **TERMS AND CONDITIONS.**

4 (a) REPEAL.—Section 2329 of title 10, United States
5 Code, is hereby repealed.

6 (b) TECHNICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 137 of such title is amended
8 by striking out the item related to section 2329.

9 **SEC. 155. CONTRACTS: REGULATIONS FOR BIDS.**

10 Section 2381 of title 10, United States Code, is
11 amended in subsection (a) by striking out “The” and in-
12 serting in lieu thereof “The Secretary of Defense or the”.

13 **SEC. 156. SUPPLIES: IDENTIFICATION OF SUPPLIER AND**
14 **SOURCES.**

15 Paragraph (2) of section 2384(b) of title 10, United
16 States Code, is amended to read as follows:

17 “(2) Paragraph (1) does not apply to a contract
18 that requires the delivery of supplies that are com-
19 mercial items, as defined in section 2302(7) of this
20 title.”.

21 **TITLE II—CONTRACT**
22 **ADMINISTRATION**

23 **SEC. 201. CONTRACT PAYMENTS.**

24 (a) CONTRACT FINANCING.—(1) Subsection (a)(2) of
25 section 2307 of title 10, United States Code, is amended
26 by striking out “bid” before “solicitations”.

1 (2) Subsection (c) of such section is amended by
2 striking out the last sentence and inserting in lieu thereof
3 the following: “Such lien is paramount to all other liens
4 and is effective on the date the first advance payment is
5 made, regardless of whether the United States has notified
6 the contractor of the lien or taken any other action.

7 (3) Subsection (d) of such section is amended—

8 (A) in the first sentence of paragraph (1)—

9 (i) by striking out “The Secretary” and in-
10 serting in lieu thereof “Except as provided in
11 paragraph (4), the Secretary”; and

12 (ii) by striking out “commensurate with
13 the work, which meets standards of quality es-
14 tablished under the contract, that has been ac-
15 complished.” and inserting in lieu thereof “com-
16 mensurate with the work that has been accom-
17 plished and that meets standards of quality es-
18 tablished under the contract.”;

19 (B) by redesignating paragraph (3) as para-
20 graph (4) and amending such paragraph to read as
21 follows:

22 “(4) This subsection does not apply to contracts
23 awarded using simplified procedures.”; and

24 (C) by inserting after paragraph (2) the follow-
25 ing new paragraph (3):

1 “(3) When payments have been made for work in
2 progress, the United States shall take title to all work in
3 progress properly allocable or chargeable to the contract.
4 Title shall vest in the United States regardless of any
5 prior or subsequently asserted security interest in the
6 work in progress.”.

7 (4) Such section is further amended by adding at the
8 end the following new subsection:

9 “(f) For contracts made by the Department of the
10 Navy, the Secretary of the Navy—

11 “(1) shall provide that the rate for progress
12 payments on any contract awarded by the Secretary
13 for repair, maintenance, or overhaul of a naval ves-
14 sel shall be not less than—

15 “(A) 95 percent, in the case of firms con-
16 sidered to be small businesses; and

17 “(B) 90 percent, in the case of all other
18 firms; and

19 “(2) may advance to private salvage companies
20 such funds as the Secretary considers necessary to
21 provide for the immediate financing of salvage oper-
22 ations, provided such advances are made on terms
23 the Secretary considers adequate for the protection
24 of the United States.”.

1 (b) REPAIR OR MAINTENANCE OF NAVAL VESSELS:

2 PROGRESS PAYMENTS UNDER CERTAIN CONTRACTS.—

3 Section 7312 of title 10, United States Code, is repealed.

4 The table of sections at the beginning of chapter 633 of
5 such title is amended by striking out the item related to
6 section 7312.

7 (c) ADVANCE OF FUNDS FOR SALVAGE OPER-

8 ATIONS.—Section 7364 of title 10, United States Code,

9 is repealed. The table of sections at the beginning of chap-
10 ter 637 of such title is amended by striking out the item
11 related to section 7364.

12 (d) PROGRESS PAYMENT FOR WORK DONE; LIEN

13 BASED ON PAYMENT.—Section 7521 of title 10, United

14 States Code, is repealed. The table of sections at the be-

15 ginning of chapter 645 of such title is amended by striking

16 out the item related to section 7521.

17 **SEC. 202. COST PRINCIPLES.**

18 (a) ALLOWABLE COSTS.—Section 2324 of title 10,

19 United States Code, is amended—

20 (1) by striking out subsections (e), (f), (g), (i),

21 and (k);

22 (2) by redesignating subsections (a), (b), (c),

23 (d), (h), (j), (l), and (m) as subsections (b), (c), (d),

24 (e), (f), (g), (h), and (i), respectively;

1 (3) by inserting at the beginning of the section
2 the following new subsection:

3 “(a) For purposes of this section, the term ‘allowable
4 cost’ means a cost, whether it is direct or indirect, that
5 the Department of Defense reimburses a contractor for
6 carrying out a defense contract. In determining what con-
7 stitutes a cost, the Department of Defense may use any
8 generally accepted method of determining or estimating
9 costs that is equitable and consistently applied. The allow-
10 ability of costs shall be determined in accordance with the
11 Federal Acquisition Regulation and the Department of
12 Defense Supplement to the Federal Acquisition
13 Regulation.”.

14 (4) in subsection (c), as redesignated—

15 (A) by striking out “subsection (a)” in the
16 first paragraph and inserting in lieu thereof
17 “subsection (b)”; and

18 (B) by striking out the period at the end
19 of paragraph (2) and inserting in lieu thereof
20 “, plus interest to be computed as provided by
21 paragraph (1)(B).”;

22 (5) in subsection (d), as redesignated, by strik-
23 ing out “subsection (b)” and inserting in lieu thereof
24 “subsection (c)”;

1 (6) in subsection (e), as redesignated, by strik-
2 ing out “subsection (a) or (b)—” and inserting in
3 lieu thereof “subsection (b) or (c)—”;

4 (7) in subsection (g), as redesignated, by strik-
5 ing out “United States Claims Court” and inserting
6 in lieu thereof “United States Court of Federal
7 Claims”; and

8 (8) in subsection (h), as redesignated—

9 (A) in paragraph (2), by striking out
10 “committees named in paragraph (3)” and in-
11 serting in lieu thereof “Committees on Armed
12 Services and the Committees on Appropriations
13 of the Senate and the House of Representa-
14 tives”;

15 (B) by striking out “in regulations pre-
16 scribed under subsection (e) or (f) or in any
17 other regulations of the Department of De-
18 fense”; and

19 (C) by striking out paragraph (3).

20 (b) CONTRACT PROFIT CONTROLS DURING EMER-
21 GENCY PERIODS.—Section 2382 of title 10, United States
22 Code, is repealed. The table of sections at the beginning
23 of chapter 141 of such title is amended by striking out
24 the item related to section 2382.

1 (c) TRAVEL EXPENSES OF GOVERNMENT CONTRAC-
2 TORS.—Section 24(a) of the Office of Federal Procure-
3 ment Policy Act (41 U.S.C. 420) is amended by inserting
4 after “Under any contract” the following: “requiring the
5 submission of cost or pricing data or the negotiation of
6 final indirect costs”.

7 **SEC. 203. CONSOLIDATION AND REVISION OF AUTHORITY**
8 **TO EXAMINE RECORDS OF CONTRACTORS.**

9 (a) AUTHORITY.—

10 (1) IN GENERAL.—Section 2313 of title 10,
11 United States Code, is amended to read as follows:

12 **“§ 2313. Examination of records of contractor**

13 “(a) AGENCY AUTHORITY.—The head of an agency,
14 acting through an authorized representative—

15 “(1) is entitled to inspect the plant and audit
16 the records of—

17 “(A) a contractor performing a cost-reim-
18 bursement, incentive, time-and-materials, labor-
19 hour, or price-redeterminable contract, or any
20 combination of such contracts, made by that
21 agency under this chapter; and

22 “(B) a subcontractor performing any sub-
23 contract under such a contract or combination
24 of contracts; and

1 “(2) shall, for the purpose of evaluating the ac-
2 curacy, completeness, and currency of cost or pricing
3 data required to be submitted pursuant to section
4 2306a of this title with respect to a contract or sub-
5 contract, have the right to examine all records of the
6 contractor or subcontractor related to—

7 “(A) the proposal for the contract or sub-
8 contract;

9 “(B) the discussions conducted on the pro-
10 posal; or

11 “(C) pricing of the contract or subcontract.

12 “(b) SUBPOENA POWER.—(1) The Director of the
13 Defense Contract Audit Agency (or any successor agency)
14 may require by subpoena the production of records of a
15 contractor, access to which is provided to the Secretary
16 of Defense by subsection (a).

17 “(2) Any such subpoena, in the case of contumacy
18 or refusal to obey, shall be enforceable by order of an ap-
19 propriate United States district court.

20 “(3) The authority provided by paragraph (1) may
21 not be redelegated.

22 “(4) The Director (or any successor official) shall
23 submit an annual report to the Secretary of Defense on
24 the exercise of such authority during the preceding year
25 and the reasons why such authority was exercised in any

1 instance. The Secretary shall forward a copy of each such
2 report to the Committees on Armed Services of the Senate
3 and House of Representatives.

4 “(c) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
5 cept as provided in paragraph (2), each contract awarded
6 after using procedures other than sealed bid procedures
7 shall provide that the Comptroller General and his rep-
8 resentatives are entitled to examine any records of the
9 contractor, or any of its subcontractors, that directly per-
10 tain to, and involve transactions relating to, the contract
11 or subcontract.

12 “(2) Paragraph (1) does not apply to a contract or
13 subcontract with a foreign contractor or foreign sub-
14 contractor if the head of the agency concerned determines,
15 with the concurrence of the Comptroller General or his
16 designee, that the application of that paragraph to the
17 contract or subcontract would not be in the public interest.
18 However, the concurrence of the Comptroller General or
19 his designee is not required—

20 “(A) where the contractor or subcontractor is a
21 foreign government or agency thereof or is precluded
22 by the laws of the country involved from making its
23 records available for examination; and

24 “(B) where the head of the agency determines,
25 after taking into account the price and availability of

1 the property and services from United States
2 sources, that the public interest would be best served
3 by not applying paragraph (1).

4 “(d) LIMITATION.—The right of the head of an agen-
5 cy under subsection (a), and the right of the Comptroller
6 General under subsection (c), with respect to a contract
7 or subcontract shall expire three years after final payment
8 under such contract or subcontract.

9 “(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—
10 This section is inapplicable with respect to contracts for
11 utility services at rates not exceeding those established to
12 apply uniformly to the public, plus any applicable reason-
13 able connection charge.

14 “(f) RECORDS DEFINED.—In this section, the term
15 ‘records’ includes books, documents, accounting proce-
16 dures and practices, and other data, regardless of type and
17 regardless of whether such items are in written form, in
18 the form of computer data, or in any other form.”.

19 (2) TECHNICAL AMENDMENT.—The item relat-
20 ing to such section in the table of sections at the be-
21 ginning of chapter 137 of title 10, United States
22 Code, is amended to read as follows:

“2313. Examination of records of contractor.”.

23 (b) REPEAL OF SUPERSEDED PROVISION.—

24 (1) REPEAL.—Section 2406 of title 10, United
25 States Code, is repealed.

1 (2) TECHNICAL AMENDMENT.—The table of
 2 sections at the beginning of chapter 141 of such title
 3 is amended by striking out the item relating to sec-
 4 tion 2406.

5 **SEC. 204. ADMINISTRATION OF CONTRACT PROVISIONS RE-**
 6 **LATING TO PRICE, DELIVERY, AND PRODUCT**
 7 **QUALITY.**

8 (a) REPEAL OF PROVISION RELATING TO CONTRAC-
 9 TOR GUARANTEES ON MAJOR WEAPON SYSTEMS.—Sec-
 10 tion 2403 of title 10, United States Code, is repealed.

11 (b) TECHNICAL AMENDMENT.—The table of sections
 12 at the beginning of chapter 141 of such title is amended
 13 by striking out the item related to section 2403.

14 **TITLE III—MAJOR SYSTEMS AND**
 15 **COMMERCIAL ACTIVITIES**
 16 **Subtitle A—Major Systems**

17 **SEC. 301. SELECTED ACQUISITION REPORTS; UNIT COST**
 18 **REPORTS.**

19 (a) AMENDMENT OF TITLE 10.—Section 2432 of title
 20 10, United States Code, is amended to read as follows:

21 **“§ 2432. Selected Acquisition Reports; unit cost re-**
 22 **ports**

23 “(a)(1) The Secretary of Defense shall submit to
 24 Congress at the end of each fiscal year quarter a report
 25 on current major defense acquisition programs. Except as

1 provided in paragraphs (2) and (3), each such report shall
2 include a status report on each defense acquisition pro-
3 gram that at the end of such quarter is a major defense
4 acquisition program. Reports under this section shall be
5 known as Selected Acquisition Reports.

6 “(2) A status report on a major defense acquisition
7 program need not be included in the Selected Acquisition
8 Report for the second, third, or fourth quarter of a fiscal
9 year if such a report was included in a previous Selected
10 Acquisition Report for that fiscal year and during the pe-
11 riod since that report there has been—

12 “(A) less than a 15 percent increase in program
13 acquisition unit cost and current procurement unit
14 cost; and

15 “(B) less than a six-month delay in any pro-
16 gram schedule milestone shown in the Selected Ac-
17 quisition Report.

18 “(3)(A) The Secretary of Defense may waive the re-
19 quirement for submission of Selected Acquisition Reports
20 for a program for a fiscal year if—

21 “(i) the program has not entered engineering
22 and manufacturing development;

23 “(ii) a reasonable cost estimate has not been es-
24 tablished for such program; and

1 “(iii) the system configuration for such pro-
2 gram is not well defined.

3 “(B) The Secretary shall submit to the Committees
4 on Armed Services of the Senate and House of Represent-
5 atives a written notification of each waiver under subpara-
6 graph (A) for a program for a fiscal year not later than
7 60 days before the President submits the budget to Con-
8 gress pursuant to section 1105 of title 31 in that fiscal
9 year.

10 “(b)(1) Selected Acquisition Reports for the first
11 quarter of a fiscal year shall be known as comprehensive
12 annual Selected Acquisition Reports.

13 “(2) Selected Acquisition Reports for the second,
14 third, and fourth quarters of a fiscal year shall be known
15 as quarterly Selected Acquisition Reports.

16 “(3) Each Selected Acquisition Report for the first
17 quarter of a fiscal year shall be designed to provide to
18 the Committees on Armed Services of the Senate and
19 House of Representatives the information such Commit-
20 tees need to perform their oversight functions. In the in-
21 terests of consistency and streamlining of reporting, the
22 Secretary of Defense shall include in the Selected Acquisi-
23 tion Reports such information as is used by the Depart-
24 ment of Defense to manage major defense acquisition pro-
25 grams. The Secretary of Defense shall determine the scope

1 and form of the items to be included in both the Com-
2 prehensive Annual and Quarterly Selected Acquisition Re-
3 port and issue guidelines to ensure consistent reporting
4 procedures. The Secretary of Defense may approve
5 changes in the content of the Selected Acquisition Report
6 if the Secretary provides such Committees with written no-
7 tification of such changes at least 60 days before the date
8 of the report that incorporates the changes.

9 “(c) Each comprehensive annual Selected Acquisition
10 Report shall be submitted within 60 days after the date
11 on which the President transmits the Budget to Congress
12 for the following fiscal year, and each Quarterly Selected
13 Acquisition Report shall be submitted within 45 days after
14 the end of the fiscal-year quarter.

15 “(d) The requirements of this section with respect to
16 a major defense acquisition program shall cease to apply
17 after 90 percent of the items to be delivered to the United
18 States under the program (shown as the total quantity
19 of items to be purchased under the program in the most
20 recent Selected Acquisition Report) have been delivered or
21 90 percent of planned expenditures under the program
22 have been made.

23 “(e) Total program reporting under this section shall
24 apply to a major defense acquisition program when funds
25 have been appropriated for such and the Secretary of De-

1 fense has decided to proceed to engineering and manufac-
2 turing development of such program. Reporting may be
3 limited to the development program as provided by the
4 guidelines of the Secretary of Defense promulgated pursu-
5 ant to subsection (b)(3) before a decision is made by the
6 Secretary to proceed to engineering and manufacturing
7 development if the Secretary notifies the Committees on
8 Armed Services of the Senate and House of Representa-
9 tives of the intention to submit a limited report under this
10 subsection not less than 15 days before a report is due
11 under this section.

12 “(f)(1) The Secretary of Defense shall require the
13 program manager for a major defense acquisition pro-
14 gram, on a quarterly basis, to submit to the service acqui-
15 sition executive designated by the Secretary concerned a
16 written report on the unit costs of the program. It shall
17 be submitted not more than 30 calendar days after the
18 end of the quarter. The Secretary of Defense shall issue
19 regulations implementing this requirement.

20 “(2) When a unit cost report is submitted to the serv-
21 ice acquisition executive designated by the Secretary con-
22 cerned under this section with respect to a major defense
23 acquisition program, the service acquisition executive shall
24 determine whether the current program acquisition unit
25 cost for the program has increased 15 percent or more

1 over the baseline program acquisition unit cost for the pro-
2 gram.

3 “(3) When a unit cost report is submitted to the serv-
4 ice acquisition executive designated by the Secretary con-
5 cerned under this section with respect to a major defense
6 acquisition program that is a procurement program, the
7 service acquisition executive, in addition to the determina-
8 tion under paragraph (2), shall determine whether the
9 current procurement unit cost for the program has in-
10 creased by 15 percent or more over the baseline procure-
11 ment unit cost for the program.

12 “(4) If, based upon the service acquisition executive’s
13 determination, the Secretary concerned determines (for
14 the first time since the beginning of the current fiscal
15 year) that the current program acquisition unit cost has
16 increased by 15 percent or more as determined under
17 paragraph (2), or that the current procurement unit cost
18 has increased by 15 percent or more as determined under
19 paragraph (3), the Secretary shall notify Congress in writ-
20 ing of such determination and of the increase with respect
21 to such program within 45 days after the date of that re-
22 port and shall include in such notification the date on
23 which the determination was made.”.

24 (b) TECHNICAL AMENDMENT.—The table of sections
25 at the beginning of chapter 144 of title 10, United States

1 Code, is amended by striking out the item relating to sec-
2 tion 2432 and inserting in lieu thereof the following:

“Sec. 2432. Selected Acquisition Reports; unit cost reports.”.

3 **SEC. 302. UNIT COST REPORTS.**

4 (a) REPEAL.—Section 2433 of title 10, United States
5 Code, is repealed.

6 (b) TECHNICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 144 of such title is amended
8 by striking out the item relating to section 2433.

9 **SEC. 303. INDEPENDENT COST ESTIMATES; OPERATIONAL**
10 **MANPOWER REQUIREMENTS.**

11 Section 2434 of title 10, United States Code, is
12 amended to read as follows:

13 **“§ 2434. Independent cost estimates; operational man-**
14 **power requirements**

15 “(a) REQUIREMENT FOR APPROVAL.—The Secretary
16 of Defense may not approve the engineering and manufac-
17 turing development, or the production and deployment, of
18 a major defense acquisition program unless an independ-
19 ent estimate of the cost of the program, and a manpower
20 estimate, has been considered by the Secretary.

21 “(b) REGULATIONS.—The Secretary of Defense shall
22 promulgate regulations governing the content and submis-
23 sion of an independent estimate of the cost of the program
24 and a manpower estimate. The regulations shall require
25 that—

1 “(1) the independent estimate shall—

2 “(A) be prepared by an office or other en-
3 tity that is not under the supervision, direction,
4 or control of the military department, defense
5 agency, or other component of the Department
6 of Defense that is directly responsible for carry-
7 ing out the development or acquisition of the
8 program, and

9 “(B) include all costs of development, pro-
10 curement, and operations and support, without
11 regard to funding source or management con-
12 trol; and

13 “(2) the manpower estimate shall properly con-
14 sider, prior to the engineering and manufacturing
15 development and production and deployment phases
16 of the program, the total endstrengths for personnel
17 required to operate, maintain, train, and support the
18 program upon full operational deployment.”.

19 **SEC. 304. ENHANCED PROGRAM STABILITY.**

20 Section 2435 of title 10, United States Code, is
21 amended to read as follows:

22 **“§ 2435. Enhanced program stability**

23 “(a) **BASELINE DESCRIPTION REQUIREMENT.**—(1)
24 The Secretary of a military department shall establish a

1 baseline description for each major defense acquisition
2 program under the jurisdiction of such Secretary.

3 “(2) The baseline shall include sufficient parameters
4 to describe the cost, schedule, and performance of such
5 major defense acquisition program.

6 “(3) No amounts appropriated or otherwise made
7 available to the Department of Defense for carrying out
8 a major defense acquisition program may be obligated
9 without an approved baseline description unless such obli-
10 gation is specifically approved by the Under Secretary of
11 Defense for Acquisition.

12 “(4) A baseline description for a major defense acqui-
13 sition program shall be established—

14 “(A) before such program enters engineering
15 manufacturing and development; and

16 “(B) before such program enters production
17 and deployment.

18 “(b) REGULATIONS.—The Secretary of Defense shall
19 promulgate regulations governing—

20 “(1) the content of baselines;

21 “(2) the submission of deviation reports by pro-
22 gram managers to the Secretary of the military de-
23 partment concerned and the Under Secretary of De-
24 fense for Acquisition; and

1 “(3) procedures for departmental review of de-
2 viation reports and submission and approval of a re-
3 vised baseline.”.

4 **SEC. 305. MAJOR PROGRAMS: COMPETITIVE PROTOTYPING.**

5 (a) REPEAL.—Section 2438 of title 10, United States
6 Code, is repealed.

7 (b) TECHNICAL AMENDMENT.—The table of sections
8 at the beginning of chapter 144 of such title is amended
9 by striking out the item relating to section 2438.

10 **SEC. 306. MAJOR PROGRAMS: COMPETITIVE ALTERNATIVE**
11 **SOURCES.**

12 (a) REPEAL.—Section 2439 of title 10, United States
13 Code, is repealed.

14 (b) TECHNICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 144 of such title is amended
16 by striking out the item relating to section 2439.

17 **Subtitle B—Testing Statutes**

18 **SEC. 311. REPEAL OF TESTING REQUIREMENT FOR**
19 **WHEELED OR TRACKED VEHICLES.**

20 (a) REPEAL.—Section 2362 of title 10, United States
21 Code, is repealed.

22 (b) TECHNICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 139 of such title is amended
24 by striking out the item relating to section 2362.

1 **SEC. 312. MAJOR SYSTEMS AND MUNITIONS PROGRAMS:**
2 **SURVIVABILITY AND LETHALITY TESTING.**

3 (a) SUBSTITUTION OF VULNERABILITY TESTING FOR
4 SURVIVABILITY TESTING.—Section 2366 of title 10, Unit-
5 ed States Code, is amended—

6 (1) by striking out “survivability” each place it
7 appears in subsections (a)(1)(A), (a)(2)(A), (c)(1),
8 (d), (e)(3), and (e)(6)(A) and inserting in lieu there-
9 of “vulnerability”; and

10 (2) in subsection (b)(1), by striking out “Sur-
11 vivability” and inserting in lieu thereof “Vulner-
12 ability”.

13 (b) LESS THAN FULL-UP TESTING AUTHORIZED.—
14 Section 2366(e)(3) of such title is amended by inserting
15 after “configured for combat,” the following: “or, if the
16 covered system is a high value system, by firing such mu-
17 nitions at components, subsystems, and subassemblies (or
18 realistic replicas or surrogates) together with performing
19 design analyses, modeling and simulation, and analysis of
20 combat data,”.

21 (c) WAIVER AUTHORITY AFTER FULL-SCALE DE-
22 VELOPMENT BEGINS.—Section 2366(c)(1) of such title is
23 amended in the first sentence by striking out “, before
24 the system enters full-scale development,”.

25 (d) REFERENCE TO CONGRESSIONAL COMMIT-
26 TEES.—Section 2366(d) of such title is amended in the

1 first sentence by striking out “defense committees of Con-
2 gress (as defined in section 2362(e)(3) of this title)” and
3 inserting in lieu thereof “Committees on Armed Services
4 and on Appropriations of the Senate and House of Rep-
5 resentatives”.

6 **SEC. 313. OPERATIONAL TEST AND EVALUATION OF DE-**
7 **FENSE ACQUISITION PROGRAMS.**

8 Section 2399(b) of title 10, United States Code, is
9 amended—

10 (1) by redesignating paragraph (5) as para-
11 graph (6); and

12 (2) by inserting after paragraph (4) the follow-
13 ing new paragraph (5):

14 “(5)(A) The Secretary of Defense may, for a particu-
15 lar major defense acquisition program, prescribe and apply
16 different operational test and evaluation procedures than
17 those provided under subsection (a) and paragraphs (1)
18 through (3) of this subsection if the Secretary first trans-
19 mits to Congress—

20 “(i) a certification that such testing would be
21 unreasonably expensive and impracticable, cause un-
22 warranted delay, or be unnecessary because of the
23 acquisition strategy for that system; and

24 “(ii) a description of the actions taken to en-
25 sure that the system will be operationally effective

1 and suitable when the system is introduced into the
2 field.

3 “(B) Alternative operational test and evaluation pro-
4 cedures prescribed pursuant to subparagraph (A) may not
5 be used to proceed with a major defense acquisition pro-
6 gram beyond low-rate initial production.”.

7 **SEC. 314. LOW-RATE INITIAL PRODUCTION OF NEW SYS-**
8 **TEMS.**

9 (a) EXCEPTION FOR STRATEGIC DEFENSE MISSILE
10 SYSTEMS.—Subsection (c) of section 2400 of title 10,
11 United States Code, is amended—

12 (1) in paragraph (1), by striking out “and mili-
13 tary satellite programs” and inserting in lieu thereof
14 “, military satellite programs, and strategic defense
15 missile programs”;

16 (2) in paragraph (2), by striking out “and mili-
17 tary satellite program” and inserting in lieu thereof
18 “, military satellite program, and strategic defense
19 missile program”; and

20 (3) by striking out the caption of such sub-
21 section and inserting in lieu thereof “LOW-RATE
22 INITIAL PRODUCTION OF NAVAL VESSEL, SAT-
23 ELLITE, AND STRATEGIC DEFENSE MISSILE PRO-
24 GRAMS.—”.

1 (b) SUBMISSION OF TEST AND EVALUATION MASTER
2 PLAN.—Paragraph (2) of such section is amended by
3 striking out subparagraph (B) and inserting in lieu there-
4 of the following:

5 “(B) any test and evaluation master plan pre-
6 pared for that program;”.

7 **Subtitle C—DOD Commercial and**
8 **Industrial Activities**

9 **SEC. 321. FACTORIES AND ARSENALS: MANUFACTURE AT.**

10 (a) CONSOLIDATED SECTION.—Chapter 148 of title
11 10, United States Code, is amended by adding at the end
12 the following:

13 **“§ 2538. Factories and arsenals: manufacture at**

14 “(a) The Secretary of Defense or secretary of a mili-
15 tary department may have supplies needed for the Depart-
16 ment of Defense and its components made in factories or
17 arsenals owned by the United States.

18 “(b) The Secretary of Defense or secretary of a mili-
19 tary department may abolish any United States arsenal
20 that the Secretary considers unnecessary.”.

21 (b) CONFORMING REPEALS AND TECHNICAL AMEND-
22 MENTS.—(1) Sections 4532 and 9532 of title 10, United
23 States Code, are hereby repealed.

24 (2) The table of sections at the beginning of chapter
25 433 of such title is amended by striking out the item relat-

ing to section 4532. The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9532.

(3) The table of sections at the beginning of chapter 148 is amended by adding at the end the following new item:

“2538. Factories and arsenals: manufacture at.”.

Subtitle D—Industrial Base and Manufacturing Technology Laws

SEC. 331. POLICY OBJECTIVES RELATING TO DEFENSE INTERNATIONAL TRADE.

Section 2501 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(d) POLICY OBJECTIVES RELATING TO DEFENSE INTERNATIONAL TRADE.—It is the policy of Congress that the United States attain the national defense technology and industrial base objectives set forth in this section by fully coordinating domestic defense acquisition practices with defense trade and cooperation, under chapter 173 of this title, and foreign military sales and assistance.”.

1 **Subtitle E—Miscellaneous**

2 **SEC. 341. OBLIGATION OF FUNDS: LIMITATION.**

3 Section 2202 of title 10, United States Code, is
4 amended by striking out subsection (a) and inserting in
5 lieu thereof the following:

6 “(a) The Secretary of Defense shall issue regulations
7 to be followed by all agencies of the Department of De-
8 fense for the procurement, production, warehousing, or
9 distribution of supplies and related functions.”.

10 **SEC. 342. REPEAL OF LIMITATION ON LENGTH OF CON-** 11 **TRACTS.**

12 Section 9081 of the Department of Defense Appro-
13 priations Act, 1990 (Public Law 101–165) is repealed.

14 **TITLE IV—SMALL PURCHASE** 15 **PROCEDURES AND SMALL** 16 **BUSINESS PROVISIONS**

17 **SEC. 401. USE OF SMALL PURCHASE PROCEDURES FOR** 18 **PROCUREMENTS CONDUCTED THROUGH** 19 **FEDERAL ACQUISITION COMPUTER NET-** 20 **WORK SYSTEM; IMPLEMENTATION OF SYS-** 21 **TEM.**

22 (a) INCREASE IN SMALL PURCHASE THRESHOLD.—

23 (1) IN GENERAL.—Section 4 of the Office of
24 Federal Procurement Policy Act (41 U.S.C. 403) is
25 amended—

1 (A) in paragraph (10) by striking “and”
2 after the semicolon; and

3 (B) by striking paragraph (11) and insert-
4 ing the following:

5 “(11) The term ‘small purchase threshold’
6 means—

7 “(A) \$25,000, except as provided in sub-
8 paragraphs (B) and (C);

9 “(B) \$50,000, in the case of a procure-
10 ment—

11 “(i) that is conducted by a procuring
12 activity that has implemented the
13 FACNET system in accordance with the
14 requirements of section 29(f)(1)(A) and
15 (B)(i); and

16 “(ii) in which notices of solicitation
17 for all contracting opportunities are issued
18 through the FACNET system; or

19 “(C) \$100,000, in the case of a procure-
20 ment—

21 “(i) that is conducted by a procuring
22 activity that has implemented the
23 FACNET system in accordance with the
24 requirements of section 29(f)(1)(A) and
25 (B)(i), (ii), (iii), and (iv); and

1 “(ii) in which—

2 “(I) notices of solicitation for all
3 contracting opportunities are issued
4 through the FACNET system,

5 “(II) responses to solicitations
6 and requests for information may be
7 submitted to the procuring activity
8 through such system,

9 “(III) information pursuant to
10 those requests is available through
11 such system,

12 “(IV) orders are made through
13 such system, and

14 “(V) public notice of awards is
15 provided through such system; and

16 “(12) the term ‘FACNET system’ means such
17 system developed by the Administrator under section
18 29.’’.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall take effect on, and apply to
21 solicitations made and orders placed on or after, the
22 expiration of the 60-day period beginning on the
23 date of issuance in final form of revisions to the
24 Federal Acquisition Regulation under subsection (b).

1 (3) INTERIM RULE.—Notwithstanding para-
2 graphs (1) and (2), during the 5-year period begin-
3 ning on the date of the issuance in final form of re-
4 visions to the Federal Acquisition Regulation under
5 subsection (b), procuring activities shall continue to
6 report, pursuant to section 19(d) of the Office of
7 Federal Procurement Policy Act (41 U.S.C. 417(d)),
8 procurement awards with a dollar value of at least
9 \$10,000, but less than \$100,000, in conformity with
10 the procedures for the reporting of a contract award
11 in excess of \$25,000 in effect on May 24, 1993.

12 (b) IMPROVED SMALL PURCHASE PROCEDURES.—

13 (1) REVISION OF FAR.—The Federal Acquisi-
14 tion Regulation shall be revised to ensure that—

15 (A) procuring activities of executive agen-
16 cies comply with the requirements of section
17 8(a) of the Small Business Act (15 U.S.C.
18 637(a)) and section 2323 of title 10, United
19 States Code, in awarding any contract with a
20 price exceeding \$25,000;

21 (B) the authority under part 13.106(a)(1)
22 of the Federal Acquisition Regulation (48
23 C.F.R. 13.106(a)(1)), as in effect on May 19,
24 1993, to make purchases without securing com-

petitive quotations does not apply to any purchases with a price exceeding \$2,500; and

(C) procuring activities of executive agencies comply with the requirements of section 15(j) of the Small Business Act (15 U.S.C. 644), relating to the small business reserve, in awarding any contract with a price below the small purchase threshold.

(2) NOTICE REQUIRED REGARDING ORAL SOLICITATIONS.—Section 18(a)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(1)(B)) is amended in the matter preceding clause (i)—

(A) by inserting “(including orally or by any other means)” after “intending to solicit”; and

(B) by inserting after “ten days” the following: “before contract award (except for any procurement in which public notice of contract opportunities for the acquisition of property or services by a procuring activity of an executive agency is performed through the FACNET system),”.

(3) PARTICIPATION BY ALL RESPONSIBLE SMALL BUSINESS CONCERNS.—Section 18 of the Of-

1 fice of Federal Procurement Policy Act (41 U.S.C.
2 416) is amended by adding at the end the following:

3 “(e) An executive agency intending to solicit offers
4 for a contract for which a notice of solicitation is required
5 to be posted under subsection (a)(1)(B) shall ensure that
6 all small business concerns are permitted to respond to
7 solicitations for the contract within the time specified in
8 the solicitations.”.

9 (c) PERFORMANCE TEST AND REPORT.—

10 (1) PERFORMANCE TEST.—The Comptroller
11 General of the United States shall monitor and col-
12 lect data on the results of the amendments made by
13 subsection (a)(1), to ascertain the effects of the
14 amendments on the participation of small business
15 concerns (including small business concerns owned
16 and controlled by socially and economically disadvan-
17 taged individuals) in procurement awards of less
18 than \$100,000 and the benefits and detriments, if
19 any, to the buying activities of the various Executive
20 agencies.

21 (2) DATA TO BE COLLECTED.—Data collected
22 under paragraph (1) shall include data regarding
23 whether the amendments made by subsection (a)(1)
24 have improved the acquisition process in terms of re-
25 duced paperwork, financial or other savings to the

1 Government, and any increase in the number of con-
2 tractors participating in the contracting process.

3 (3) PERIOD.—Data shall be collected for pur-
4 poses of paragraph (1) during the period beginning
5 with the first full fiscal year quarter after the effec-
6 tive date of the amendments made by subsection
7 (a)(1) and ending September 30, 1996.

8 (4) REPORT.—By March 1, 1997, the Comp-
9 troller General of the United States shall report to
10 the Committee on Government Operations of the
11 House of Representatives, the Committee on Govern-
12 mental Affairs of the Senate, and the Committees on
13 Small Business of the House of Representatives and
14 the Senate on the effects of the increase in the small
15 purchase threshold made by the amendments made
16 by subsection (a)(1).

17 (d) FUNCTIONS OF ADMINISTRATOR FOR FEDERAL
18 PROCUREMENT POLICY.—Section 6(d) of the Office of
19 Federal Procurement Policy Act (41 U.S.C. 405(d)) is
20 amended—

21 (1) in paragraph (7) by striking “and” after
22 the semicolon at the end; and

23 (2) by redesignating paragraph (8) as para-
24 graph (10) and inserting after paragraph (7) the fol-
25 lowing:

9 “(9) developing policies that will promote
10 achievement of goals for participation by small busi-
11 nesses and small businesses owned and controlled by
12 socially and economically disadvantaged individ-
13 uals.”.

(e) IMPLEMENTATION OF ELECTRONIC DATA INTER-
CHANGE FOR PROCUREMENT INFORMATION.—The Office
of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)
is further amended by adding after section 28 the follow-
ing:

19 **“SEC. 29. ELECTRONIC INTERCHANGE OF PROCUREMENT**
20 **INFORMATION.**

21 “(a) IN GENERAL.—The Administrator, in consulta-
22 tion with the Office of Information and Regulatory Af-
23 fairs, shall establish a program and assign a program
24 manager for, and provide overall direction of policy and
25 leadership in, the development, coordination, installation,

1 operation, and completion of implementation by executive
2 agencies, by not later than 5 years after the date of the
3 enactment of the Defense Acquisition Reform Act of 1993,
4 of a Federal Acquisition Computer Network system. Such
5 system shall be known as the 'FACNET system'. The
6 FACNET system shall involve enabling technology and
7 procurement electronic data interchange transaction sets.
8 The enabling technology shall consist of a computer net-
9 work, supporting data bases, and interfaces that inter-
10 connect Government automated systems to the network.
11 The procurement electronic data interchange transaction
12 sets shall facilitate the electronic interchange of standard
13 procurement information between Government and indus-
14 try automated acquisition systems.

15 “(b) FUNCTIONS OF ADMINISTRATOR OF GENERAL
16 SERVICES.—The Administrator of General Services shall
17 do the following:

18 “(1) Provide technical support for the
19 FACNET system by doing the following:

20 “(A) Coordinate with the Administrator to
21 facilitate the efficient and widespread imple-
22 mentation of the FACNET system by executive
23 agencies. This shall include interfacing the
24 FACNET system to other systems, such as the

1 Government bank card and Electronic Funds
2 Transfer payment systems.

3 “(B) Assist the Director of the National
4 Institute of Standards and Technology in the
5 development and application of appropriate
6 Federal Information Processing Standards.

7 “(C) Prepare a technical plan for coordi-
8 nating the design, development, implementation,
9 operation, and maintenance of the FACNET
10 system. The plan shall include roles and respon-
11 sibilities, major milestones, cost estimates, and
12 performance requirements.

13 “(2) Ensure compliance with section 111 of the
14 Federal Property and Administrative Services Act of
15 1949 in the implementation of the FACNET system
16 by executive agencies, including by limiting the scope
17 of delegations under subsection (a) of that section.

18 “(3) Evaluate progress by executive agencies in
19 implementing the FACNET system, and recommend
20 changes in that implementation to the program
21 manager assigned by the Administrator under sub-
22 section (a).

23 “(4) Submit to the Congress, on the date that
24 is one year after the date of the enactment of the
25 Defense Acquisition Reform Act of 1993 and on that

1 date in each of the 5 years thereafter, a report on
2 the overall progress by the executive branch of the
3 Government and by each executive agency in imple-
4 menting the FACNET system.

5 “(c) IMPLEMENTATION OF FACNET SYSTEM BY EX-
6 ECUTIVE AGENCIES.—

7 “(1) IN GENERAL.—The head of each executive
8 agency shall cooperate with the Administrator and
9 the Administrator of General Services to implement
10 the FACNET system for the agency.

11 “(2) DESIGNATION OF AGENCY PROGRAM MAN-
12 AGER.—

13 “(A) DESIGNATION.—The head of each ex-
14 ecutive agency shall designate a program man-
15 ager to implement the FACNET system for the
16 agency and otherwise implement this section.

17 “(B) FUNCTIONS.—A program manager
18 designated under this paragraph for an execu-
19 tive agency shall—

20 “(i) report directly to the senior pro-
21 curement executive designated for the
22 agency under section 16(3);

23 “(ii) be responsible for the timely and
24 cost-effective implementation of the
25 FACNET system for the agency in a man-

1 ner that is responsive to the procurement
2 needs of the agency, national business
3 needs, and the public's interest in open
4 government;

5 “(iii) develop plans for phasing-in the
6 implementation of the FACNET system
7 for the procuring activities of the executive
8 agency and phasing-out local network sys-
9 tems that perform comparable procure-
10 ment functions;

11 “(iv) participate in the interagency
12 development of standard procurement elec-
13 tronic data interchange transaction sets;

14 “(v) using the resources of the agen-
15 cy, develop and implement a standardized
16 and comprehensive training program for
17 agency employees in the use and manage-
18 ment of the FACNET system; and

19 “(vi) in carrying out this section, com-
20 ply with guidelines issued by the Adminis-
21 trator under this section and program di-
22 rectives issued by the Administrator of
23 General Services under section 111 of the
24 Federal Property and Administrative Serv-
25 ices Act of 1949.

1 “(d) FUNCTIONS OF NATIONAL INSTITUTE OF
2 STANDARDS AND TECHNOLOGY.—The Director of the Na-
3 tional Institute of Standards and Technology shall—

4 “(1) ensure that the FACNET system complies
5 with Federal Information Processing Standards;

6 “(2) issue additional standards for the
7 FACNET system as necessary; and

8 “(3) establish tests to facilitate the aims of this
9 section and support policies established by the Ad-
10 ministrator under this section.

11 “(e) FUNCTIONS OF SMALL BUSINESS ADMINISTRA-
12 TION.—The Administrator of the Small Business Adminis-
13 tration shall—

14 “(1) develop plans to coordinate and promote
15 the use of the FACNET system by small businesses,
16 that incorporate outreach efforts by the Small Busi-
17 ness Administration, agency Offices of Small and
18 Disadvantaged Business and Utilization, Small Busi-
19 ness Development Centers, and other appropriate or-
20 ganizations; and

21 “(2) use the resources of the Office of Procure-
22 ment Assistance and Office of Advocacy to develop
23 a standardized and comprehensive training program
24 to train small business concerns in the use of the
25 FACNET system, through Small Business Adminis-

1 tration district offices and Small Business Develop-
2 ment Centers.

3 “(f) FACNET SYSTEM COMPATIBILITY STAND-
4 ARDS.—

5 “(1) IN GENERAL.—The Administrator, in con-
6 sultation with the Office of Information and Regu-
7 latory Affairs, the Administrator of General Serv-
8 ices, the Administrator of the Small Business Ad-
9 ministration, and the Director of the National Insti-
10 tute of Standards and Technology, shall prescribe
11 policies for ensuring convenient and universal access
12 to the FACNET system, and shall develop a set of
13 system compatibility standards for each FACNET
14 system interface and FACNET system support data
15 base. The system compatibility standards shall speci-
16 fy the functional capabilities of each FACNET sys-
17 tem interface, and the minimum set of data elements
18 of each FACNET system support data base. The
19 system compatibility standards shall ensure that the
20 following FACNET system functions are satisfac-
21 torily performed by each executive agency, executive
22 agency component, or procuring activity:

23 “(A) Provision of widespread public notice
24 of solicitations for contract opportunities issued
25 by the agency, component, or activity and of or-

1 ders to be made by the agency, component, or
2 activity below the small purchase threshold.

3 “(B) Allowing private users to electroni-
4 cally—

5 “(i) selectively access and review so-
6 licitations issued by the agency, compo-
7 nent, or activity;

8 “(ii) respond to solicitations issued by
9 the agency, component, or activity;

10 “(iii) receive orders from the agency,
11 component, or activity; and

12 “(iv) access information on contract
13 awards made by the agency, component, or
14 activity.

15 “(2) BINDING STANDARDS.—The FACNET
16 system interface and FACNET system support data
17 base of each procuring activity shall comply with the
18 system compatibility standards developed under
19 paragraph (1), except to the extent the Adminis-
20 trator has waived application of such standards to
21 the activity under paragraph (3).

22 “(3) WAIVERS.—(A) The Administrator may, in
23 writing, waive the application of any system compat-
24 ibility standard to a procuring activity if the Admin-
25 istrator—

1 “(i) determines that compliance with the
2 standard by the procuring activity would ad-
3 versely affect the accomplishment of the mission
4 of the activity or cause a major adverse finan-
5 cial impact on the activity which is not offset by
6 Government-wide savings; and

7 “(ii) approves a plan, developed by the pro-
8 curing activity, for complying with the standard
9 by not later than 1 year after the issuance of
10 the waiver.

11 “(B) The authority of the Administrator to
12 issue waivers under this paragraph may not be dele-
13 gated.

14 “(C) A waiver under this paragraph may be is-
15 sued by the Administrator only after receipt of a re-
16 quest for the waiver submitted by the program man-
17 ager designated under subsection (c)(2)(A) for the
18 procuring activity for which the waiver is requested.

19 “(D) The Administrator shall promptly submit
20 a notice of each waiver under this paragraph to the
21 Committee on Government Operations of the House
22 of Representatives and the Committee on Govern-
23 mental Affairs of the Senate, and promptly publish
24 the notice in the Federal Register.”.

25 (f) TECHNICAL CORRECTIONS.—

1 (1) Section 18(d) of the Office of Federal Pro-
2 curement Policy Act (41 U.S.C. 416) is amended by
3 striking “(e)” in the first sentence and inserting
4 “(a)”.

5 (2) Section 18(a)(1) of the Office of Federal
6 Procurement Policy Act (41 U.S.C. 416(a)(1)) is
7 amended—

8 (A) in subparagraph (A) in the matter fol-
9 lowing clause (ii) by striking “notice” and in-
10 serting “notice of solicitation”; and

11 (B) in subparagraph (B) in the matter
12 preceding clause (i) by striking “a notice of so-
13 licitation described in subsection (f)” and in-
14 serting “a notice of solicitation described in
15 subsection (b)”.

16 **SEC. 402. SMALL BUSINESS RESERVATION.**

17 Section 15(j) of the Small Business Act (15 U.S.C.
18 644(j)) is amended to read as follows:

19 “(j) Each contract for the procurement of goods and
20 services which has an anticipated value not in excess of
21 the small purchase threshold and which is subject to small
22 purchase procedures prescribed by section 2304(g) of title
23 10, United States Code, or section 303(g) of the Federal
24 Property and Administrative Services Act of 1949 (41
25 U.S.C. 253(g)) shall be reserved exclusively for small busi-

1 ness concerns unless the contracting officer is unable to
2 obtain offers from two or more small business concerns
3 that are competitive with market prices and in terms of
4 quality and delivery of the goods or services being pur-
5 chased. Nothing in this subsection shall be construed as
6 precluding the award of contracts with a value not in ex-
7 cess of the small purchase threshold under the authority
8 of section 8(a) of this Act, section 2323 of title 10, United
9 States Code, or section 712 of the Business Opportunity
10 Development Reform Act of 1988 (Public Law 100–656;
11 15 U.S.C. 644 note). In utilizing small purchase proce-
12 dures, contracting officers shall, wherever circumstances
13 permit, choose a method of payment which minimizes pa-
14 perwork and facilitates prompt payment to contractors.”.

15 **SEC. 403. EXEMPTIONS FOR CONTRACTS NOT IN EXCESS OF**
16 **THE SMALL PURCHASE THRESHOLD.**

17 The Office of Federal Procurement Policy Act (41
18 U.S.C. 401 et seq.), as amended by section 401(e), is fur-
19 ther amended by adding at the end the following new sec-
20 tion:

21 **“SEC. 30. SMALL PURCHASE THRESHOLD.**

22 “(a) EXEMPTION FROM CERTAIN LAWS.—Purchases
23 made and contracts awarded with a value that is not in
24 excess of the small purchase threshold shall be exempt
25 from the following laws:

1 “(1) Section 2313 of title 10, United States
2 Code.

3 “(2) Section 2393(d) of title 10, United States
4 Code.

5 “(3) Section 2631 of title 10, United States
6 Code.

7 “(b) EXEMPTION FROM CONTRACT CLAUSE RE-
8 QUIREMENT.—Unless otherwise determined by the Admin-
9 istrator, for contracts awarded with a value that is not
10 in excess of the small purchase threshold and which are
11 subject to small purchase procedures prescribed by section
12 2304(g) of title 10, United States Code or section 303(g)
13 of the Federal Property and Administrative Services Act
14 (41 U.S.C. 253(g)), no contract clause shall be required
15 to implement the following laws:

16 “(1) Section 2207 of title 10, United States
17 Code.

18 “(2) Section 2306(b) of title 10, United States
19 Code.

20 “(3) Section 3741 of the Revised Statutes (41
21 U.S.C. 22).

22 “(c) SPECIAL RULE RELATING TO EXEMPTIONS.—
23 A provision of law hereafter enacted shall not be construed
24 as applicable to purchases of property or services not in
25 excess of the small purchase threshold unless that provi-

1 sion of law specifically refers to this section and specifi-
 2 cally states that such provision of law modifies or super-
 3 sedes the provisions of this section.”.

4 **SEC. 404. SMALL BUSINESS AMENDMENTS.**

5 Subparagraph (A) of section 8(a)(1) of the Small
 6 Business Act (15 U.S.C. 637(a)(1)) is amended in the
 7 first full sentence—

8 (1) by inserting “(i)” after “in his discretion”;

9 (2) by striking out the period at the end of such
 10 sentence and inserting in lieu thereof “, or”; and

11 (3) by adding at the end of such sentence the
 12 following: “(ii) to award such procurement contract
 13 directly to a socially and economically disadvantaged
 14 small business designated by the Administration pro-
 15 vided that the small business does not request that
 16 the award be made through the Administration.”.

17 **SEC. 405. NOTIFICATION OF SMALL BUSINESS CONCERNS**
 18 **IN LOCALITY OF PROCURING AGENCY.**

19 Section 18 of the Office of Federal Procurement Pol-
 20 icy Act (41 U.S.C. 416), as amended by section 401(b)(3),
 21 is further amended by adding at the end the following:

22 “(f) NOTIFICATION OF LOCAL SMALL BUSINESS
 23 CONCERNS.—An executive agency intending to solicit of-
 24 fers for a contract for which a notice of solicitation is re-
 25 quired to be posted under subsection (a)(1)(B) shall en-

1 sure that small business concerns located in the jurisdic-
2 tion of the Small Business Administration District Office
3 nearest to the agency, and other small business concerns
4 in the State in which the agency is located, are sent no-
5 tices of the solicitation.”.

6 **TITLE V—INTELLECTUAL** 7 **PROPERTY**

8 **SEC. 501. DEPARTMENT OF DEFENSE ACQUISITION OF IN-** 9 **TELLECTUAL PROPERTY RIGHTS.**

10 (a) AUTHORIZED ACQUISITIONS.—Section 2386 of
11 title 10, United States Code, is amended by striking out
12 paragraphs (3) and (4) and inserting in lieu thereof the
13 following:

14 “(3) Technical data and computer software.

15 “(4) Releases for past infringement of patents
16 or copyrights or for unauthorized use of technical
17 data or computer software.”.

18 (b) REDUNDANT PROVISION.—

19 (1) REPEAL.—Section 7210 of title 10, United
20 States Code, is repealed.

21 (2) TECHNICAL AMENDMENT.—The table of
22 sections at the beginning of chapter 631 of such title
23 is amended by striking out the item relating to sec-
24 tion 7210.

1 **TITLE VI—STANDARDS OF**
2 **CONDUCT**
3 **Subtitle A—Ethics Provisions**

4 **SEC. 601. AMENDMENTS TO OFFICE OF FEDERAL PROCURE-**
5 **MENT POLICY ACT.**

6 (a) APPLICABILITY OF CERTIFICATION REQUIRE-
7 MENT TO CONTRACTS IN EXCESS OF \$500,000.—Sub-
8 section (e)(7)(A) of section 27 of the Office of Federal
9 Procurement Policy Act (41 U.S.C. 423) is amended by
10 striking out “\$100,000” and inserting in lieu thereof
11 “\$500,000”.

12 (b) APPLICABILITY OF RESTRICTIONS RESULTING
13 FROM PROCUREMENT ACTIVITIES OF PROCUREMENT OF-
14 FICIALS TO CONTRACTS IN EXCESS OF \$500,000.—Sub-
15 section (f) of such section is amended—

16 (1) by adding at the end of paragraph (1) the
17 following new sentence: “This subsection applies
18 only to contracts, extensions, and modifications in
19 excess of \$500,000.”; and

20 (2) in paragraph (2)(A), by striking out
21 “\$100,000” and inserting in lieu thereof
22 “\$500,000”.

1 **SEC. 602. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

2 (a) REPEAL.—The following sections of title 10,
3 United States Code, are repealed: Sections 2207, 2397,
4 2397a, 2397b, 2397c, and 2408.

5 (b) TECHNICAL AMENDMENTS.—Part IV of subtitle
6 A of title 10, United States Code, is amended—

7 (1) in the table of sections at the beginning of
8 chapter 131, by striking out the item relating to sec-
9 tion 2207; and

10 (2) in the table of sections for chapter 141, by
11 striking out the items relating to sections 2397,
12 2397a, 2397b, 2397c, and 2408.

13 **Subtitle B—Additional**
14 **Amendments**

15 **SEC. 611. CONTRACTING FUNCTIONS PERFORMED BY FED-**
16 **ERAL PERSONNEL.**

17 (a) AMENDMENT OF OFPP ACT.—The Office of Fed-
18 eral Procurement Policy Act, as amended by sections
19 401(e) and 403, is further amended by adding at the end
20 the following new section:

21 “CONTRACTING FUNCTIONS PERFORMED BY FEDERAL
22 PERSONNEL

23 “SEC. 31. (a) LIMITATION ON PAYMENT FOR ADVI-
24 SORY AND ASSISTANCE SERVICES.—(1) No person who is
25 not an employee may be paid by an agency for services
26 to conduct evaluations or analyses of any aspect of a pro-

1 posal submitted for an acquisition unless employees with
2 adequate training and capabilities to perform such evalua-
3 tions and analyses are not readily available within the
4 agency or any other Federal agency.

5 “(2) In the administration of this subsection, the
6 head of each agency shall determine the standards of ade-
7 quate training and capability of employees to conduct such
8 acquisitions.

9 “(b) DELEGATION OF PROCUREMENT AUTHORITY.—
10 With respect to an acquisition that is subject to section
11 111 of the Federal Property and Administrative Services
12 Act of 1949 (40 U.S.C. 759), the Administrator of Gen-
13 eral Services may not issue a delegation of procurement
14 authority for the acquisition unless the request for the del-
15 egation of procurement authority includes a determination
16 of the contracting agency that—

17 “(1) such agency has and will utilize employees
18 within the agency, or employees available from an-
19 other agency, who are adequately trained and capa-
20 ble of conducting evaluations and analyses of pro-
21 posals submitted for such an acquisition; or

22 “(2)(A) such agency does not have employees
23 within the agency who are adequately trained and
24 capable of conducting evaluations and analyses of
25 proposals submitted for such an acquisition; and

1 “(B) adequately trained and capable employees
2 are not readily available from other agencies in ac-
3 cordance with regulations promulgated by the Fed-
4 eral Acquisition Regulatory Council.

5 “(c) DEFINITION.—For purposes of this section, the
6 term ‘employee’ has the meaning given such term in sec-
7 tion 2105 of title 5, United States Code.”.

8 (b) REQUIREMENT FOR GUIDANCE AND REGULA-
9 TIONS.—

10 (1) GUIDANCE AND REGULATIONS REQUIRED.—
11 Not later than 90 days after the date of the enact-
12 ment of this Act, the Federal Acquisition Regulatory
13 Council established by section 25(a) of the Office of
14 Federal Procurement Policy Act (41 U.S.C. 421(a))
15 shall—

16 (A) review part 37 of title 48 of the Code
17 of Federal Regulations as it relates to the use
18 of advisory and assistance services; and

19 (B) provide guidance and promulgate regu-
20 lations regarding—

21 (i) what actions Federal agencies are
22 required to take to determine whether ex-
23 pertise is readily available within the Fed-
24 eral Government before contracting for ad-

visory and technical services to conduct acquisitions; and

(ii) the manner in which Federal employees with expertise may be shared with agencies needing expertise for such acquisitions.

(2) DEFINITION.—In paragraph (1), the term “employee” has the meaning given such term in section 2105 of title 5, United States Code.

SEC. 612. REPEAL OF EXECUTED REQUIREMENT FOR STUDY AND REPORT.

Section 17 of the Office of Federal Procurement Policy Act (41 U.S.C. 415) is repealed.

SEC. 613. WAITING PERIOD FOR SIGNIFICANT CHANGES PROPOSED FOR ACQUISITION REGULATIONS.

Section 22(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) is amended—

(1) by striking out “30 days” and inserting in lieu thereof “60 days”; and

(2) by adding at the end the following: “Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective

1 date be less than 30 days after the publication
2 date.”.

3 **TITLE VII—DEFENSE TRADE AND** 4 **COOPERATION**

5 **SEC. 701. INTERNATIONAL COOPERATIVE AGREEMENTS.**

6 (a) DEFENSE INTERNATIONAL AGREEMENTS.—

7 (1) TERMINOLOGY REVISIONS.—Section 2531
8 of title 10, United States Code, is amended—

9 (A) in the subsection captions for sub-
10 sections (a) and (c), by striking out “MOUs
11 AND RELATED” and inserting in lieu thereof
12 “INTERNATIONAL”;

13 (B) in subsection (a), by striking out “pro-
14 posed memorandum of understanding, or any
15 existing or proposed agreement related to a
16 memorandum of understanding,” in the matter
17 above paragraph (1) and inserting in lieu there-
18 of “proposed international agreement, including
19 a memorandum of understanding,”;

20 (C) by striking out “memorandum of un-
21 derstanding or related agreement” each place it
22 appears and inserting in lieu thereof “inter-
23 national agreement”;

24 (D) in subsection (b), by striking out
25 “memorandum or related agreement” each

place it appears in the second sentence and inserting in lieu thereof “international agreement”; and

(E) in subsection (c)—

(i) by striking out “A” after “AGREEMENTS.—” and inserting in lieu thereof “An”; and

(ii) by striking out “memorandum or agreement” and inserting in lieu thereof “international agreement”.

(2) EXPANDED SCOPE OF AGREEMENTS.—Section 2531(a) of title 10, United States Code, is amended by striking out “research, development, or production” in the matter above paragraph (1) and inserting in lieu thereof “research, development, production, or logistics support”.

(3) TECHNICAL AMENDMENTS.—

(A) SECTION HEADING.—The heading of section 2531 of title 10, United States Code, is amended to read as follows:

“§ 2531. Defense international agreements”.

(B) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of subchapter V of chapter 148 of such title is amended to read as follows:

“2531. Defense international agreements.”.

1 (b) REPEAL OF UNNECESSARY AUTHORITY.—

2 (1) REPEAL.—Section 7344 of title 10, United
3 States Code, is repealed.

4 (2) TECHNICAL AMENDMENT.—The table of
5 sections at the beginning of chapter 635 of such title
6 is amended by striking out the item relating to sec-
7 tion 7344.

8 **SEC. 702. ACQUISITION, CROSS-SERVICING AGREEMENTS,**
9 **AND STANDARDIZATION.**

10 (a) LIMITED WAIVER OF RESTRICTIONS ON AC-
11 CRUED REIMBURSABLE LIABILITIES AND CREDITS FOR
12 CONTINGENCY OPERATIONS.—Section 2347 of title 10,
13 United States Code, is amended by adding at the end the
14 following new subsection:

15 “(c) The Secretary of Defense may waive the restric-
16 tions in subsections (a) and (b) for a period not to exceed
17 180 days upon a written determination that the armed
18 forces are involved in a contingency operation or that in-
19 volvement of the armed forces in a contingency operation
20 is imminent. Upon making such a determination, the Sec-
21 retary shall transmit a copy of the determination to the
22 Committees on Armed Services of the Senate and House
23 of Representatives.”.

24 (b) COMMUNICATIONS SUPPORT.—Section 2350f of
25 title 10, United States Code, is amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e); and

3 (2) by inserting after subsection (c) the follow-
4 ing new subsection:

5 “(d)(1) Nothing in this section shall be construed to
6 limit the authority of the Secretary of Defense, without
7 a formal bilateral agreement or multilateral arrangement,
8 to furnish communications support and related supplies
9 to, or receive communications support and related supplies
10 from, an allied country in accordance with this subsection.

11 “(2) The Secretary of Defense may furnish or receive
12 such support and supplies on a reciprocal basis for a pe-
13 riod not to exceed 90 days—

14 “(A) in order to meet emerging operational re-
15 quirements of the United States and the allied coun-
16 try; or

17 “(B) incident to a joint military exercise with
18 the allied country.

19 “(3) If interconnection of communication circuits is
20 maintained for joint or multilateral defense purposes
21 under the authority of this subsection, the costs of main-
22 taining such circuits may be allocated among the various
23 users.”.

1 **TITLE VIII—COMMERCIAL ITEM**
 2 **ACQUISITION**

3 **SEC. 801. PROCUREMENT OF COMMERCIAL AND**
 4 **NONDEVELOPMENTAL ITEMS.**

5 (a) ADDITION OF CHAPTER TO TITLE 10.—(1) Part
 6 IV of subtitle A of title 10, United States Code, is amend-
 7 ed by adding at the end the following new chapter:

8 **“CHAPTER 174—PROCUREMENT OF**
 9 **COMMERCIAL ITEMS**

“Sec.

“2951. Policy.

“2952. Acquisition of commercial items.

“2953. Precedence; relationship to other laws.

“2954. Specific acquisition procedures and restrictions.

“2955. Pricing; remedy for inaccurate documentation; audit; nonexclusivity.

10 **“§ 2951. Policy.**

11 “To further achieve effective, efficient, and economic
 12 administration of the Federal procurement system, the
 13 Secretary of Defense shall, in accordance with applicable
 14 laws, Government-wide policies and regulations, and good
 15 business practices, implement a preference for the acquisi-
 16 tion of commercial items by—

17 “(1) whenever practicable, stating specifications
 18 in solicitation for bids and proposals in terms such
 19 that bidders and offerors are enabled and encour-
 20 aged to offer to supply commercial items in response
 21 to agency solicitations;

1 “(2) reducing impediments to the acquisition of
2 commercial items in agency procurement policies,
3 practices, and procedures not required by law; and

4 “(3) requiring training of appropriate personnel
5 in the acquisition of commercial items.

6 **“§ 2952. Acquisition of commercial items.**

7 “(a) MARKET RESEARCH.—Before soliciting bids or
8 proposals for a contract for property or services, the Sec-
9 retary of Defense or the Secretary of the military depart-
10 ment concerned shall conduct market research, appro-
11 priate to the circumstances, to determine whether the
12 needs of the department can be met by the acquisition of
13 commercial items.

14 “(b) ADVOCATE FOR ACQUISITION OF COMMERCIAL
15 ITEMS.—

16 “(1) ESTABLISHMENT.—There is established in
17 the Department of Defense the position of Advocate
18 for the Acquisition of Commercial Items (hereinafter
19 in this subsection referred to as the ‘Advocate’).

20 “(2) FUNCTIONS.—The Advocate shall—

21 “(A) monitor compliance by the Depart-
22 ment with the preference required under sub-
23 section (a) for the acquisition of commercial
24 items;

1 “(B) make recommendations and proposals
2 to the Secretary of Defense regarding the re-
3 form of procurement statutes and regulations to
4 implement that preference; and

5 “(C) report to the Secretary of Defense on
6 the prospective effect of proposed statutes and
7 regulations on the acquisition of commercial
8 items.

9 **“§ 2953. Precedence; relationship to other laws**

10 “(a) EXEMPTIONS FROM PRESENT LAW.—In the ac-
11 quisition of commercial items or commercial components
12 by the Department of Defense, the following sections of
13 this title do not apply:

14 “(1) Section 2207.

15 “(2) Section 2306(b).

16 “(3) Section 2313.

17 “(4) Section 2384(b).

18 “(5) Section 2393.

19 “(6) Section 2397c.

20 “(7) Section 2408.

21 “(8) Section 2410b.

22 “(9) Section 2631.

23 “(b) PRINCIPLE OF CONSTRUCTION WITH FUTURE
24 LAWS.—Notwithstanding any other provision of law en-
25 acted after the date of the enactment of this chapter, no

1 provision of this chapter or of any other law expressly ref-
2 erenced in this chapter shall be held to have been amended
3 by another law unless that law specifically refers to and
4 amends such provision of this chapter or such provision
5 of law expressly referenced in this chapter.

6 “(c) RELATION TO SIMPLIFIED PROCEDURES.—
7 When commercial items are being procured by the Govern-
8 ment, the provisions of this chapter, and regulations is-
9 sued under this chapter, shall take precedence over regula-
10 tions issued pursuant to section 2304(g) of this title.
11 Nothing in this section shall affect the set-aside for small
12 businesses established by section 15(j) of the Small Busi-
13 ness Act (15 U.S.C. 644(j)).

14 “(d) SET-ASIDES PRESERVED.—Nothing in this
15 chapter shall prevent the Secretary of Defense from re-
16 stricting the award of prime contracts for commercial
17 items to any source as may from time to time be pre-
18 scribed or permitted by law.

19 **“§ 2954. Specific acquisition procedures and restric-**
20 **tions**

21 “(a) RESTRICTION TO FIXED PRICE BASIS.—The
22 Department of Defense shall purchase commercial items
23 and components acquired under this chapter on a firm,
24 fixed price basis or on a fixed price with economic price
25 adjustment basis.

1 “(b) ECONOMIC PRICE ADJUSTMENT.—To the extent
2 practical, contracts for commercial items shall not require
3 contract performance for a term longer than customary
4 industry practice for the product being acquired. Contract-
5 ing officers may consider the use of economic price adjust-
6 ment provisions if an extended period of performance can-
7 not be avoided.

8 “(c) REQUIREMENTS FOR COMMERCIAL AND
9 NONDEVELOPMENTAL ITEMS.—The Secretary of Defense
10 shall ensure that, to the maximum extent practicable—

11 “(1) requirements of the Department of De-
12 fense with respect to a procurement of supplies are
13 stated in terms of—

14 “(A) functions to be performed;

15 “(B) performance required; or

16 “(C) essential physical characteristics;

17 “(2) such requirements are defined so that
18 commercial or nondevelopmental items and commer-
19 cial components may be procured to fulfill such re-
20 quirements;

21 “(3) such requirements are fulfilled through the
22 procurement of commercial or nondevelopmental
23 items and commercial components; and

24 “(4) prior to developing new specifications, the
25 Department conducts market research to determine

1 whether commercial or nondevelopmental items
2 are available or could be modified to meet agency
3 needs.

4 “(d) CONTRACT QUALITY REQUIREMENTS.—(1) To
5 the maximum extent practicable, regulations issued under
6 this chapter shall permit contractors providing commercial
7 items to use their existing quality assurance systems and
8 quality programs.

9 “(2) To the maximum extent practicable, regulations
10 issued under this chapter shall prohibit Government in-
11 spection or test of commercial items prior to tender of
12 those items by the contractor for acceptance by the Gov-
13 ernment.

14 **“§ 2955. Pricing; remedy for inaccurate documenta-**
15 **tion; audit; nonexclusivity**

16 “(a) REQUIREMENT FOR DETERMINATION OF PRICE
17 REASONABLENESS.—(1) When a procurement for a com-
18 mercial item or component by the Government or its con-
19 tractors, using other than sealed bid procedures, has been
20 based on adequate price competition, or when the price
21 agreed on is based on prices of items or components sold
22 in sufficient quantities to the general public to establish
23 a market price, the contracting officer shall presume that
24 the price contained in the most advantageous evaluated
25 offer (price and all other factors considered) received in

1 response to a solicitation, or a price based on established
2 market prices, is fair and reasonable unless the contract-
3 ing officer has information that the price is not fair and
4 reasonable. Prior to the award of a contract where price
5 is based on market prices, the contracting officer shall
6 make reasonable efforts to establish the currency and ac-
7 curacy of such prices.

8 “(2) When paragraph (1) is not applicable, the con-
9 tracting officer shall use price analysis to determine
10 whether or not the price is fair and reasonable.

11 “(3) When required by the contracting officer prior
12 to award or contract definitization, the contractor shall
13 promptly furnish documentation adequate to demonstrate
14 the market price of the item or items or otherwise needed
15 to establish a fair and reasonable price. All documentation
16 received from an offeror, if not otherwise in the public do-
17 main and if requested by the offeror and marked as con-
18 fidential, shall be treated by the Government as confiden-
19 tial and exempt from disclosure to the extent permitted
20 by section 552 of title 5.

21 “(4) If the contracting officer determines under para-
22 graph (1) or (2) that the price is fair and reasonable, no
23 cost or pricing data may be required under the provisions
24 of section 2306a of this title.

1 “(b) GOVERNMENT’S REMEDY FOR INACCURATE
2 DOCUMENTATION.—When documentation is submitted
3 pursuant to subsection (a)(3), the Government shall be en-
4 titled to a reduction in price, and the return of any over-
5 payment, with interest thereon, if an offeror knowingly or
6 negligently submits materially inaccurate or misleading
7 documentation in support of a contract or modification,
8 the contracting officer relies on such documentation in
9 reaching a determination that a price is reasonable, and
10 because of such reliance the price significantly exceeds
11 that which would otherwise have been accepted. For pur-
12 poses of applying this subsection, a contracting officer will
13 be rebuttably presumed to have relied upon all material
14 documentation supplied by an offeror.

15 “(c) GOVERNMENT’S RIGHT TO AUDIT.—The United
16 States shall have the right to audit all documentation pro-
17 vided by an offeror under subsection (b) and all books and
18 records of the offeror directly relating to such documenta-
19 tion, except that, if the offeror has made no representation
20 as to the completeness of the documentation supplied, the
21 United States shall have no right to audit for complete-
22 ness. The audit right created by this subsection shall ex-
23 pire one year after the date of award of the contract or
24 the date of the modification of a contract with respect to
25 which documentation was provided. When contract price

1 is established under this section, the Government shall
 2 have no audit rights other than those set out in this sub-
 3 section.

4 “(d) NON-EXCLUSIVITY.—The Government’s rights
 5 and remedies available in this chapter are in addition to
 6 those otherwise provided by law.”.

7 (2) The tables of chapters at the beginning of subtitle
 8 A of title 10, United States Code, and at the beginning
 9 of part IV of such subtitle are each amended by inserting
 10 after the item relating to chapter 173 the following new
 11 item:

“174. Procurement of Commercial Items 2951”.

12 (b) REGULATIONS AND SIMPLIFIED FORM CON-
 13 TRACTS.—

14 (1) REVISION OF FAR.—Unless otherwise spe-
 15 cifically provided in this Act, not later than 180
 16 days after the date of the enactment of this Act, the
 17 Federal Acquisition Regulation issued under section
 18 25(c) of the Office of Federal Procurement Policy
 19 Act (41 U.S.C. 421(c)) shall be revised to implement
 20 the amendments made by this section.

21 (2) SIMPLIFIED UNIFORM CONTRACT.—(A)(i)
 22 The revision of the Federal Acquisition Regulation
 23 under paragraph (1) shall include issuance of one or
 24 more simplified uniform contracts for the acquisition
 25 of commercial items by the Department of Defense

1 and shall require that such simplified uniform con-
2 tract or contracts be used for the acquisition of com-
3 mercial items to the maximum extent practicable.
4 The uniform contract or contracts shall include
5 only—

6 (I) those contract clauses that are required
7 to implement provisions of law applicable to
8 such an acquisition; and

9 (II) those contract clauses that are deter-
10 mined to be consistent with standard commer-
11 cial practice and appropriate for inclusion in
12 such contracts.

13 (ii) In addition to the clauses described under
14 clause (i), contracts for the acquisition of commer-
15 cial items may include such clauses as are essential
16 for the protection of the Federal Government's inter-
17 est in—

18 (I) a particular contract, as determined in
19 writing by the contracting officer for such con-
20 tract; or

21 (II) a class of contracts, as determined by
22 the Secretary of Defense or Secretary of the
23 military department concerned, in consultation
24 with the Administrator for Federal Procure-
25 ment Policy.

1 (iii) Contracts for the acquisition of commercial
2 items may not include any clause other than those
3 clauses authorized under clause (i) or (ii).

4 (B)(i) Except as provided in clause (ii), a prime
5 contractor under a Department of Defense contract
6 for the acquisition of commercial items may be re-
7 quired to include in subcontracts under such con-
8 tract only those contract clauses that are required to
9 implement provisions of law applicable to such sub-
10 contracts.

11 (ii) In addition to the clauses described under
12 clause (i), a contractor under a Department of De-
13 fense contract for the acquisition of commercial
14 items may be required to include in a subcontract
15 under such contract such clauses as are essential for
16 the protection of the Federal Government's interest
17 in—

18 (I) a particular subcontract, as determined
19 in writing by the contracting officer for such
20 contract; or

21 (II) a class of subcontracts, as determined
22 by the Secretary of Defense or Secretary of the
23 military department concerned, in consultation
24 with the Administrator for Federal Procure-
25 ment Policy.

1 (iii) The Department of Defense may not re-
2 quire a contractor for the acquisition of commercial
3 items to include in a subcontract for that acquisition
4 any clause other than those clauses authorized under
5 clause (i) or (ii).

6 (C) Notwithstanding subparagraphs (A) and
7 (B) of this paragraph, the Department of Defense
8 may use uniform contract clauses developed under
9 paragraphs (2) and (3) of section 824(b) of the Na-
10 tional Defense Authorization Act for Fiscal Years
11 1990 and 1991 (10 U.S.C. 2325 note; Public Law
12 101-189) until September 30, 1995.

13 (3) WARRANTIES.—The Federal Acquisition
14 Regulation shall require that, to the maximum ex-
15 tent practicable, the Department of Defense shall
16 take advantage of warranties offered by commercial
17 contractors and use such warranties for the repair
18 and replacement of commercial items.

19 (4) MARKET ACCEPTANCE.—The Federal Ac-
20 quisition Regulation shall direct the Department of
21 Defense to require, where appropriate and in accord-
22 ance with criteria prescribed in the regulations,
23 offerors to demonstrate in their offers that products
24 being offered have—

1 (A)(i) achieved a level of commercial mar-
 2 ket acceptance necessary to indicate that the
 3 products are suitable for the Department's use;
 4 or

5 (ii) been satisfactorily supplied under cur-
 6 rent or recent contracts for the same or similar
 7 requirements; and

8 (B) otherwise meet the product descrip-
 9 tion, specifications, or other criteria prescribed
 10 by the public notice and solicitation.

11 (5) PAST PERFORMANCE.—The Federal Acqui-
 12 sition Regulation shall provide guidance to the De-
 13 partment of Defense on the use of past performance
 14 of products and sources as a factor in award deci-
 15 sions.

16 **TITLE IX—EFFECTIVE DATE**

17 **SEC. 901. EFFECTIVE DATE.**

18 Except as otherwise provided in this Act, this Act and
 19 the amendments made by this Act shall take effect on the
 20 date of the enactment of this Act.

○

HR 3586 IH—2

HR 3586 IH—3

HR 3586 IH—4

HR 3586 IH—5

HR 3586 IH——6

HR 3586 IH——7

HR 3586 IH——8

HR 3586 IH——9